



Virginia Register of Regulations

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THE VIRGINIA REGISTER INFORMATION PAGE

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

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

PUBLICATION SCHEDULE AND DEADLINES

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

April 2008 through March 2009

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
INDEX 3 Volume 24		July 2008
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
FINAL INDEX Volume 24		October 2008
25:1	August 27, 2008	September 15, 2008
25:2	September 10, 2008	September 29, 2008
25:3	September 24, 2008	October 13, 2008
25:4	October 8, 2008	October 27, 2008
25:5	October 22, 2008	November 10, 2008
25:6	November 5, 2008	November 24, 2008
25:7	November 18, 2008 (Tuesday)	December 8, 2008
INDEX 1 Volume 25		January 2009
25:8	December 3, 2008	December 22, 2008
25:9	December 16, 2008 (Tuesday)	January 5, 2009
25:10	December 30, 2008 (Tuesday)	January 19, 2009
25:11	January 14, 2009	February 2, 2009
25:12	January 28, 2009	February 16, 2009
25:13	February 11, 2009	March 2, 2009

*Filing deadlines are Wednesdays unless otherwise specified.

CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Fall 2007 VAC Supplement includes final regulations published through *Virginia Register* Volume 23, Issue 21, dated June 25, 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
Title 1. Administration			
1 VAC 55-30-10 through 1 VAC 55-30-90	Added	23:26 VA.R. 4413-4416	10/3/07
1 VAC 55-30-10 through 1 VAC 55-30-90	Erratum	24:7 VA.R. 940	--
Title 2. Agriculture			
2 VAC 5-110 (Forms)	Amended	23:26 VA.R. 4452	--
2 VAC 5-210-30	Amended	24:9 VA.R. 1096	12/11/07
2 VAC 5-210-41	Amended	24:9 VA.R. 1097	12/11/07
2 VAC 5-390-180	Amended	24:15 VA.R. 2023	3/11/08
2 VAC 5-531-50	Amended	24:16 VA.R. 2235	5/29/08
2 VAC 5-531-140	Amended	24:16 VA.R. 2241	5/29/08
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 15-20-81	Amended	24:16 VA.R. 2242	4/14/08
Title 3. Alcoholic Beverages			
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	*
3 VAC 5-50-130	Amended	23:25 VA.R. 4109	*
3 VAC 5-50-140	Amended	23:25 VA.R. 4110	*
3 VAC 5-50-140 emer	Amended	24:11 VA.R. 1344	1/9/08-1/8/09
3 VAC 5-50-145 emer	Added	24:11 VA.R. 1345	1/9/08-1/8/09
3 VAC 5-70-220	Amended	24:14 VA.R. 1891	5/1/08
3 VAC 5-70-225 emer	Added	24:10 VA.R. 1257	1/2/08-1/1/09
Title 4. Conservation and Natural Resources			
4 VAC 5-36-50	Amended	24:6 VA.R. 638	1/1/08
4 VAC 5-36-60	Amended	24:6 VA.R. 644	1/1/08
4 VAC 5-36-70	Amended	24:6 VA.R. 645	1/1/08
4 VAC 5-36-90	Amended	24:6 VA.R. 647	1/1/08
4 VAC 5-36-100	Amended	24:6 VA.R. 649	1/1/08
4 VAC 5-36-110	Amended	24:6 VA.R. 654	1/1/08
4 VAC 5-36-120	Amended	24:6 VA.R. 655	1/1/08
4 VAC 5-36-130	Amended	24:6 VA.R. 656	1/1/08
4 VAC 5-36-140	Amended	24:6 VA.R. 657	1/1/08
4 VAC 5-36-150	Amended	24:6 VA.R. 659	1/1/08
4 VAC 5-36-200	Amended	24:6 VA.R. 662	1/1/08
4 VAC 5-36-210	Amended	24:6 VA.R. 670	1/1/08
4 VAC 5-36-220	Amended	24:6 VA.R. 675	1/1/08

* Objection to Fast-Track Rulemaking 24:1

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 15-20-50	Amended	24:10 VA.R. 1258	1/1/08
4 VAC 15-20-130	Amended	24:10 VA.R. 1259	1/1/08
4 VAC 15-20-200	Amended	24:10 VA.R. 1261	1/1/08
4 VAC 15-20-210	Amended	24:10 VA.R. 1261	1/1/08
4 VAC 15-30-5	Amended	24:10 VA.R. 1262	1/1/08
4 VAC 15-30-40	Amended	24:10 VA.R. 1262	1/1/08
4 VAC 15-200-10	Amended	24:6 VA.R. 676	10/26/07
4 VAC 15-270-40	Amended	24:6 VA.R. 676	7/1/08
4 VAC 15-270-80	Added	24:6 VA.R. 676	10/26/07
4 VAC 15-270-90	Added	24:6 VA.R. 677	1/1/08
4 VAC 15-320-25	Amended	24:10 VA.R. 1265	1/1/08
4 VAC 15-330-30	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-100	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-120	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-160	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-171	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-330-200	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-340-10	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-340-30	Amended	24:10 VA.R. 1274	1/1/08
4 VAC 15-350-20	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-30	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-60	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-70	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-360-10	Amended	24:10 VA.R. 1276	1/1/08
4 VAC 20-20-50	Amended	24:5 VA.R. 555	11/1/07
4 VAC 20-150-30	Amended	24:10 VA.R. 1277	1/1/08
4 VAC 20-252-55	Amended	24:10 VA.R. 1278	1/1/08
4 VAC 20-252-90	Amended	24:4 VA.R. 471	10/1/07
4 VAC 20-252-100	Amended	24:4 VA.R. 471	10/1/07
4 VAC 20-252-120	Amended	24:10 VA.R. 1278	1/1/08
4 VAC 20-252-150	Amended	24:10 VA.R. 1279	1/1/08
4 VAC 20-252-160	Amended	24:10 VA.R. 1279	1/1/08
4 VAC 20-252-230	Amended	24:10 VA.R. 1281	1/1/08
4 VAC 20-260-10	Amended	24:4 VA.R. 472	10/1/07
4 VAC 20-260-20	Amended	24:4 VA.R. 472	10/1/07
4 VAC 20-260-30	Amended	24:4 VA.R. 473	10/1/07
4 VAC 20-260-35	Added	24:4 VA.R. 474	10/1/07
4 VAC 20-260-40	Amended	24:4 VA.R. 474	10/1/07
4 VAC 20-260-60	Amended	24:4 VA.R. 474	10/1/07
4 VAC 20-270-55	Amended	24:15 VA.R. 2023	3/1/08
4 VAC 20-320-50	Amended	24:12 VA.R. 1456	2/1/08
4 VAC 20-530-20	Amended	24:12 VA.R. 1456	2/1/08
4 VAC 20-530-31	Amended	24:13 VA.R. 1735	2/5/08
4 VAC 20-530-32	Repealed	24:12 VA.R. 1457	2/1/08
4 VAC 20-610-20	Amended	24:8 VA.R. 959	12/1/07
4 VAC 20-610-25	Added	24:8 VA.R. 959	12/1/07
4 VAC 20-610-30	Amended	24:8 VA.R. 960	12/1/07
4 VAC 20-610-30	Amended	24:15 VA.R. 2024	3/1/08
4 VAC 20-610-50	Amended	24:8 VA.R. 961	12/1/07
4 VAC 20-610-60	Amended	24:8 VA.R. 961	12/1/07
4 VAC 20-620-30	Amended	24:10 VA.R. 1281	12/27/07

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-620-40 emer	Amended	24:8 VA.R. 962	11/28/07-12/27/07
4 VAC 20-620-40	Amended	24:10 VA.R. 1282	12/27/07
4 VAC 20-620-50	Amended	24:15 VA.R. 2025	3/1/08
4 VAC 20-620-70	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-650-20	Amended	24:4 VA.R. 474	10/1/07
4 VAC 20-650-30	Amended	24:4 VA.R. 475	10/1/07
4 VAC 20-650-40	Amended	24:4 VA.R. 475	10/1/07
4 VAC 20-700-20	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-720-20	Amended	24:4 VA.R. 475	10/1/07
4 VAC 20-720-20	Erratum	24:5 VA.R. 621	--
4 VAC 20-720-40 through 4 VAC 20-720-80	Amended	24:4 VA.R. 478-480	10/1/07
4 VAC 20-720-40	Amended	24:12 VA.R. 1457	2/1/08
4 VAC 20-720-50	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-720-60	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-720-80	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-720-95	Added	24:4 VA.R. 480	10/1/07
4 VAC 20-720-110	Amended	24:4 VA.R. 480	10/1/07
4 VAC 20-750-10	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-750-30	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-751-15	Added	24:15 VA.R. 2027	3/1/08
4 VAC 20-751-20	Amended	24:15 VA.R. 2027	3/1/08
4 VAC 20-752-30	Amended	24:16 VA.R. 2246	4/1/08
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 20-910-45	Amended	24:5 VA.R. 556	11/1/07
4 VAC 20-950-47	Amended	24:15 VA.R. 2028	3/1/08
4 VAC 20-950-48	Amended	24:15 VA.R. 2028	3/1/08
4 VAC 20-950-48.1	Amended	24:15 VA.R. 2029	3/1/08
4 VAC 20-960-45	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-960-47	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-1040-20	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-1040-35	Added	24:12 VA.R. 1459	2/1/08
4 VAC 20-1090-30	Amended	24:8 VA.R. 965	12/1/07
4 VAC 20-1120-20	Amended	23:23 VA.R. 3871	6/28/07
4 VAC 20-1130-10 through 4 VAC 20-1130-70	Added	24:8 VA.R. 968-970	12/1/07
4 VAC 25-20 (Forms)	Amended	23:24 VA.R. 3968	--
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	24:11 VA.R. 1424	--
4 VAC 25-130-777.17	Amended	23:22 VA.R. 3696	8/8/07
Title 5. Corporations			
5 VAC 5-20-20	Amended	24:11 VA.R. 1347	2/15/08
5 VAC 5-20-140	Amended	24:11 VA.R. 1347	2/15/08
5 VAC 5-20-150	Amended	24:11 VA.R. 1348	2/15/08
5 VAC 5-20-170	Amended	24:11 VA.R. 1348	2/15/08
5 VAC 5-20-240	Amended	24:11 VA.R. 1349	2/15/08
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

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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
Title 6. Criminal Justice and Corrections			
6 VAC 15-20-10 through 6 VAC 15-20-230	Amended	23:22 VA.R. 3697-3703	8/9/07
6 VAC 15-61-10 through 6 VAC 15-61-300	Repealed	24:8 VA.R. 970	1/24/08
6 VAC 15-62-10 through 6 VAC 15-62-120	Added	24:8 VA.R. 970-979	1/24/08
6 VAC 15-62-110	Amended	24:13 VA.R. 1736	3/3/08
6 VAC 15-62 (Forms)	Amended	24:12 VA.R. 1523	--
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 35-180-10 through 6 VAC 35-180-170	Added	24:5 VA.R. 557-561	1/1/08
6 VAC 35-190-10 through 6 VAC 35-190-110	Added	24:2 VA.R. 137-139	10/31/07
6 VAC 40-50-10 through 6 VAC 40-50-80 emer	Added	23:23 VA.R. 3876	7/1/06-12/29/07
6 VAC 40-50-10 through 6 VAC 40-50-80	Added	24:9 VA.R. 1103-1104	2/6/08
Title 8. Education			
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 20-190-10	Repealed	24:5 VA.R. 562	1/1/08
8 VAC 20-500-10	Repealed	24:5 VA.R. 563	1/1/08
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 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
Title 9. Environment			
9 VAC 5-20-203	Amended	24:5 VA.R. 564	12/12/07
9 VAC 5-20-204	Amended	24:5 VA.R. 565	12/12/07
9 VAC 5-40-20	Amended	24:5 VA.R. 566	12/12/07
9 VAC 5-50-20	Amended	24:5 VA.R. 570	12/12/07
9 VAC 5-50-400	Amended	24:5 VA.R. 573	12/12/07
9 VAC 5-50-410	Amended	24:5 VA.R. 573	12/12/07
9 VAC 5-60-60	Amended	24:5 VA.R. 579	12/12/07
9 VAC 5-60-90	Amended	24:5 VA.R. 579	12/12/07
9 VAC 5-60-92	Added	24:5 VA.R. 579	12/12/07
9 VAC 5-60-95	Amended	24:5 VA.R. 579	12/12/07
9 VAC 5-60-100	Amended	24:5 VA.R. 580	12/12/07
9 VAC 5-91-20	Amended	24:5 VA.R. 587	12/12/07
9 VAC 5-140-1061	Added	24:6 VA.R. 679	12/26/07
9 VAC 5-140-1062	Added	24:6 VA.R. 680	12/26/07
9 VAC 5-140-2061	Added	24:6 VA.R. 681	12/26/07
9 VAC 5-140-2062	Added	24:6 VA.R. 682	12/26/07
9 VAC 5-140-3061	Added	24:6 VA.R. 683	12/26/07
9 VAC 5-140-3062	Added	24:6 VA.R. 683	12/26/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 5-140-3400	Amended	24:5 VA.R. 594	12/12/07
9 VAC 20-60-18	Amended	24:9 VA.R. 1106	2/6/08
9 VAC 20-130-10	Amended	24:4 VA.R. 480	11/28/07
9 VAC 20-130-40	Amended	24:4 VA.R. 484	11/28/07
9 VAC 20-130-60	Amended	24:4 VA.R. 484	11/28/07
9 VAC 20-130-70	Amended	24:4 VA.R. 484	11/28/07
9 VAC 20-130-90	Amended	24:4 VA.R. 485	11/28/07
9 VAC 20-130-110	Amended	24:4 VA.R. 485	11/28/07
9 VAC 20-130-120	Amended	24:4 VA.R. 486	11/28/07
9 VAC 20-130-120	Erratum	24:6 VA.R. 889	--
9 VAC 20-130-125	Added	24:4 VA.R. 488	11/28/07
9 VAC 20-130-125	Erratum	24:6 VA.R. 889	--
9 VAC 20-130-130	Amended	24:4 VA.R. 489	11/28/07
9 VAC 20-130-140	Repealed	24:4 VA.R. 489	11/28/07
9 VAC 20-130-150	Repealed	24:4 VA.R. 489	11/28/07
9 VAC 20-130-165	Amended	24:4 VA.R. 489	11/28/07
9 VAC 20-130-175 through 9 VAC 20-130-230	Amended	24:4 VA.R. 490-493	11/28/07
9 VAC 20-130-200	Erratum	24:6 VA.R. 889	--
9 VAC 25-20-10	Amended	24:6 VA.R. 701	1/1/08
9 VAC 25-20-20	Amended	24:6 VA.R. 702	1/1/08
9 VAC 25-20-30	Repealed	24:6 VA.R. 702	1/1/08
9 VAC 25-20-40	Amended	24:6 VA.R. 702	1/1/08
9 VAC 25-20-50	Amended	24:6 VA.R. 703	1/1/08
9 VAC 25-20-60	Amended	24:6 VA.R. 703	1/1/08
9 VAC 25-20-90	Amended	24:6 VA.R. 704	1/1/08
9 VAC 25-20-100	Amended	24:6 VA.R. 704	1/1/08
9 VAC 25-20-110	Amended	24:6 VA.R. 705	1/1/08
9 VAC 25-20-120	Amended	24:6 VA.R. 706	1/1/08
9 VAC 25-20-130	Amended	24:6 VA.R. 708	1/1/08
9 VAC 25-20-146	Added	24:6 VA.R. 708	1/1/08
9 VAC 25-20-147	Added	24:6 VA.R. 709	1/1/08
9 VAC 25-20-148	Added	24:6 VA.R. 709	1/1/08
9 VAC 25-20-149	Added	24:6 VA.R. 709	1/1/08
9 VAC 25-31-100	Amended	24:3 VA.R. 313	11/14/07
9 VAC 25-31-100	Amended	24:6 VA.R. 711	1/1/08
9 VAC 25-31-120	Amended	24:3 VA.R. 309	11/14/07
9 VAC 25-31-165	Amended	24:3 VA.R. 333	11/14/07
9 VAC 25-31-220	Amended	24:6 VA.R. 731	1/1/08
9 VAC 25-31-290	Amended	24:6 VA.R. 735	1/1/08
9 VAC 25-31-460	Amended	24:6 VA.R. 738	1/1/08
9 VAC 25-31-475	Added	24:6 VA.R. 738	1/1/08
9 VAC 25-31-485	Added	24:6 VA.R. 738	1/1/08
9 VAC 25-31-505	Added	24:6 VA.R. 739	1/1/08
9 VAC 25-32 (Forms)	Amended	24:6 VA.R. 739	--
9 VAC 25-32 (Forms)	Amended	24:13 VA.R. 1738	--
9 VAC 25-32-40	Amended	24:6 VA.R. 739	1/1/08
9 VAC 25-32-60	Amended	24:6 VA.R. 739	1/1/08
9 VAC 25-32-80	Amended	24:6 VA.R. 740	1/1/08
9 VAC 25-32-100	Amended	24:6 VA.R. 743	1/1/08
9 VAC 25-32-140	Amended	24:6 VA.R. 743	1/1/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-32-210	Amended	24:6 VA.R. 744	1/1/08
9 VAC 25-32-220	Amended	24:6 VA.R. 745	1/1/08
9 VAC 25-32-240	Amended	24:6 VA.R. 745	1/1/08
9 VAC 25-32-300	Amended	24:6 VA.R. 745	1/1/08
9 VAC 25-32-310 through 9 VAC 25-32-760	Added	24:6 VA.R. 746-781	1/1/08
9 VAC 25-120-10	Amended	24:9 VA.R. 1107	2/6/08
9 VAC 25-120-20	Amended	24:9 VA.R. 1107	2/6/08
9 VAC 25-120-50	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-60	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-70	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-80	Amended	24:9 VA.R. 1109	2/6/08
9 VAC 25-196-20	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-40	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-60	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-70	Amended	24:9 VA.R. 1125	2/6/08
9 VAC 25-210-10	Amended	24:9 VA.R. 1132	2/6/08
9 VAC 25-210-60	Amended	24:9 VA.R. 1136	2/6/08
9 VAC 25-210-116	Amended	24:9 VA.R. 1140	2/6/08
9 VAC 25-210-130	Amended	24:9 VA.R. 1142	2/6/08
9 VAC 25-260-5	Amended	24:4 VA.R. 536	8/14/07
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 25-260-30	Amended	24:7 VA.R. 908	*
9 VAC 25-260-30	Amended	24:13 VA.R. 1741	*
9 VAC 25-260-50	Amended	24:4 VA.R. 536	8/14/07
9 VAC 25-260-187	Added	24:4 VA.R. 536	8/14/07
9 VAC 25-260-310	Amended	24:4 VA.R. 536	8/14/07
9 VAC 25-260-480	Amended	24:4 VA.R. 536	8/14/07
9 VAC 25-660-10	Amended	24:9 VA.R. 1144	2/6/08
9 VAC 25-660-60	Amended	24:9 VA.R. 1145	2/6/08
9 VAC 25-660-70	Amended	24:9 VA.R. 1147	2/6/08
9 VAC 25-660-80	Amended	24:9 VA.R. 1148	2/6/08
9 VAC 25-660-100	Amended	24:9 VA.R. 1148	2/6/08
9 VAC 25-670-10	Amended	24:9 VA.R. 1156	2/6/08
9 VAC 25-670-70	Amended	24:9 VA.R. 1157	2/6/08
9 VAC 25-670-80	Amended	24:9 VA.R. 1158	2/6/08
9 VAC 25-670-100	Amended	24:9 VA.R. 1159	2/6/08
9 VAC 25-680-10	Amended	24:9 VA.R. 1170	2/6/08
9 VAC 25-680-60	Amended	24:9 VA.R. 1172	2/6/08
9 VAC 25-680-70	Amended	24:9 VA.R. 1174	2/6/08
9 VAC 25-680-80	Amended	24:9 VA.R. 1175	2/6/08
9 VAC 25-680-100	Amended	24:9 VA.R. 1176	2/6/08
9 VAC 25-690-10	Amended	24:9 VA.R. 1188	2/6/08
9 VAC 25-690-70	Amended	24:9 VA.R. 1190	2/6/08
9 VAC 25-690-80	Amended	24:9 VA.R. 1191	2/6/08
9 VAC 25-690-100	Amended	24:9 VA.R. 1191	2/6/08
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

* Effective upon filing notice of U.S. EPA approval with Registrar of Regulations

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-720-50	Amended	24:2 VA.R. 140	11/15/07
9 VAC 25-720-80	Amended	23:23 VA.R. 3901	10/22/07
9 VAC 25-720-90	Amended	24:2 VA.R. 147	11/15/07
9 VAC 25-790-10	Amended	24:6 VA.R. 784	1/1/08
9 VAC 25-790-50	Amended	24:6 VA.R. 787	1/1/08
9 VAC 25-790-60	Amended	24:6 VA.R. 787	1/1/08
9 VAC 25-790-120	Amended	24:6 VA.R. 788	1/1/08
9 VAC 25-790-130	Amended	24:6 VA.R. 790	1/1/08
9 VAC 25-790-150	Amended	24:6 VA.R. 790	1/1/08
9 VAC 25-790-180	Amended	24:6 VA.R. 791	1/1/08
9 VAC 25-790-200	Amended	24:6 VA.R. 791	1/1/08
9 VAC 25-790-240	Amended	24:6 VA.R. 791	1/1/08
9 VAC 25-790-540	Amended	24:6 VA.R. 792	1/1/08
9 VAC 25-790-550	Amended	24:6 VA.R. 792	1/1/08
9 VAC 25-790-570	Amended	24:6 VA.R. 795	1/1/08
9 VAC 25-790-580	Amended	24:6 VA.R. 797	1/1/08
9 VAC 25-790-590	Amended	24:6 VA.R. 797	1/1/08
9 VAC 25-790-600	Amended	24:6 VA.R. 798	1/1/08
9 VAC 25-790-660	Amended	24:6 VA.R. 799	1/1/08
9 VAC 25-790-880	Amended	24:6 VA.R. 799	1/1/08
Title 11. Gaming			
11 VAC 10-45-10	Amended	24:5 VA.R. 595	12/12/07
11 VAC 10-45-25	Added	24:5 VA.R. 596	12/12/07
11 VAC 10-130-60	Amended	24:16 VA.R. 2247	4/14/08
11 VAC 10-180-10	Amended	24:16 VA.R. 2247	4/14/08
11 VAC 10-180-20	Repealed	24:16 VA.R. 2248	4/14/08
11 VAC 10-180-25	Added	24:16 VA.R. 2250	4/14/08
11 VAC 10-180-35	Added	24:16 VA.R. 2250	4/14/08
11 VAC 10-180-60	Amended	24:16 VA.R. 2251	4/14/08
11 VAC 10-180-70	Amended	24:16 VA.R. 2256	4/14/08
11 VAC 10-180-75	Added	24:16 VA.R. 2256	4/14/08
11 VAC 10-180-80	Amended	24:16 VA.R. 2257	4/14/08
11 VAC 10-180-85	Amended	24:16 VA.R. 2258	4/14/08
11 VAC 10-180-110	Amended	24:16 VA.R. 2259	4/14/08
Title 12. Health			
12 VAC 5-31-2300 through 12 VAC 5-31-2970	Added	24:6 VA.R. 806-818	1/1/08
12 VAC 5-40-10 through 12 VAC 5-40-190	Repealed	24:6 VA.R. 806	1/1/08
12 VAC 5-90-80 emer	Amended	24:5 VA.R. 597	10/24/07-10/23/08
12 VAC 5-125-10 through 12 VAC 5-125-180	Added	23:23 VA.R. 3904-3919	9/1/07
12 VAC 5-220-10	Amended	24:11 VA.R. 1350	3/5/08
12 VAC 5-220-110	Amended	24:11 VA.R. 1353	3/5/08
12 VAC 5-220-130	Amended	24:11 VA.R. 1354	3/5/08
12 VAC 5-220-200	Amended	24:11 VA.R. 1354	3/5/08
12 VAC 5-371-150	Amended	24:11 VA.R. 1357	3/5/08
12 VAC 5-381-10 through 12VAC5-381-40	Amended	24:11 VA.R. 1358-1361	3/5/08
12 VAC 5-381-60 through 12VAC5-381-100	Amended	24:11 VA.R. 1361-1362	3/5/08
12 VAC 5-381-120	Amended	24:11 VA.R. 1362	3/5/08
12 VAC 5-381-140	Amended	24:11 VA.R. 1362	3/5/08
12 VAC 5-381-150	Amended	24:11 VA.R. 1362	3/5/08
12 VAC 5-381-240	Amended	24:11 VA.R. 1363	3/5/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-381-280	Amended	24:11 VA.R. 1363	3/5/08
12 VAC 5-391-10	Amended	24:11 VA.R. 1364	3/5/08
12 VAC 5-391-30 through 12 VAC 5-391-100	Amended	24:11 VA.R. 1366-1368	3/5/08
12 VAC 5-391-120	Amended	24:11 VA.R. 1368	3/5/08
12 VAC 5-391-130	Amended	24:11 VA.R. 1368	3/5/08
12 VAC 5-391-150	Amended	24:11 VA.R. 1369	3/5/08
12 VAC 5-391-160	Amended	24:11 VA.R. 1369	3/5/08
12 VAC 5-391-250	Amended	24:11 VA.R. 1370	3/5/08
12 VAC 5-391-280	Amended	24:11 VA.R. 1370	3/5/08
12 VAC 5-410-230	Amended	24:11 VA.R. 1371	3/5/08
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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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
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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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
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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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 5-585-70	Amended	24:5 VA.R. 602	12/17/07
12 VAC 5-585-510	Amended	24:5 VA.R. 602	12/17/07
12 VAC 5-585-600	Amended	24:5 VA.R. 607	12/17/07
12 VAC 5-585-610	Amended	24:5 VA.R. 607	12/17/07
12 VAC 5-585-620	Amended	24:5 VA.R. 612	12/17/07
12 VAC 5-585-630	Amended	24:5 VA.R. 614	12/17/07
12 VAC 5-585-760 through 12 VAC 5-585-830	Added	23:25 VA.R. 4298-4301	10/1/07
12 VAC 30-10-820	Added	24:2 VA.R. 191	10/31/07
12 VAC 30-60-500 emer	Added	23:26 VA.R. 4427	8/8/07-8/7/08
12 VAC 30-80-40 emer	Amended	24:3 VA.R. 377	10/1/07-9/30/08
12 VAC 30-120	Erratum	23:24 VA.R. 4080	--
12 VAC 30-120-70	Amended	24:13 VA.R. 1791	7/1/08
12 VAC 30-120-90	Amended	24:13 VA.R. 1793	7/1/08
12 VAC 30-120-140	Amended	24:13 VA.R. 1794	7/1/08
12 VAC 30-120-211	Amended	24:13 VA.R. 1797	7/1/08
12 VAC 30-120-213	Amended	24:13 VA.R. 1800	7/1/08
12 VAC 30-120-225	Amended	24:13 VA.R. 1802	7/1/08
12 VAC 30-120-229	Amended	24:13 VA.R. 1804	7/1/08
12 VAC 30-120-237	Amended	24:13 VA.R. 1805	7/1/08
12 VAC 30-120-247	Amended	24:13 VA.R. 1807	7/1/08
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	23:24 VA.R. 4032	9/1/07-8/31/08
12 VAC 30-120-700	Amended	24:13 VA.R. 1808	7/1/08
12 VAC 30-120-710	Amended	24:13 VA.R. 1812	7/1/08
12 VAC 30-120-754	Amended	24:13 VA.R. 1813	7/1/08
12 VAC 30-120-758	Amended	24:13 VA.R. 1815	7/1/08
12 VAC 30-120-762	Amended	24:13 VA.R. 1815	7/1/08
12 VAC 30-120-770	Amended	24:13 VA.R. 1816	7/1/08
12 VAC 30-120-900	Amended	24:13 VA.R. 1818	7/1/08
12 VAC 30-120-910	Amended	24:13 VA.R. 1820	7/1/08
12 VAC 30-120-920	Amended	24:13 VA.R. 1821	7/1/08
12 VAC 30-120-970	Amended	24:13 VA.R. 1823	7/1/08
12 VAC 30-120-1500 through 12 VAC 30-120-1550	Added	24:6 VA.R. 819-829	12/26/07
12 VAC 30-120-1500	Amended	24:13 VA.R. 1825	7/1/08
12 VAC 30-120-1510	Amended	24:13 VA.R. 1827	7/1/08
12 VAC 30-120-1550	Amended	24:13 VA.R. 1828	7/1/08
12 VAC 30-120-1560	Added	24:13 VA.R. 1830	7/1/08
12 VAC 30-120-2000	Added	24:13 VA.R. 1832	7/1/08
12 VAC 30-120-2010	Added	24:13 VA.R. 1833	7/1/08
12 VAC 30-135-100 through 12 VAC 30-135-360	Added	24:2 VA.R. 196-218	12/1/07
12 VAC 35-105-115	Added	24:11 VA.R. 1372	3/5/08

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12 VAC 35-115-10 through 12 VAC 35-115-250	Amended	23:25 VA.R. 4301-4340	9/19/07
12 VAC 35-115-90	Erratum	24:6 VA.R. 889	--
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
Title 13. Housing			
13 VAC 5-21-10	Amended	24:14 VA.R. 1894	5/1/08
13 VAC 5-21-20	Amended	24:14 VA.R. 1894	5/1/08
13 VAC 5-21-31	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-41	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-45	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-51	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-61	Amended	24:14 VA.R. 1896	5/1/08
13 VAC 5-31-20 through 13 VAC 5-31-50	Amended	24:14 VA.R. 1897-1898	5/1/08
13 VAC 5-31-70 through 13 VAC 5-31-170	Repealed	24:14 VA.R. 1898-1903	5/1/08
13 VAC 5-31-75	Added	24:14 VA.R. 1898	5/1/08
13 VAC 5-31-85	Added	24:14 VA.R. 1900	5/1/08
13 VAC 5-31-200	Amended	24:14 VA.R. 1904	5/1/08
13 VAC 5-31-210	Amended	24:14 VA.R. 1904	5/1/08
13 VAC 5-31-215 through 13 VAC 5-31-270	Added	24:14 VA.R. 1904-1905	5/1/08
13 VAC 5-51-21 through 13 VAC 5-51-51	Amended	24:14 VA.R. 1907-1910	5/1/08
13 VAC 5-51-81	Amended	24:14 VA.R. 1910	5/1/08
13 VAC 5-51-85	Amended	24:14 VA.R. 1921	5/1/08
13 VAC 5-51-91	Amended	24:14 VA.R. 1924	5/1/08
13 VAC 5-51-130 through 13 VAC 5-51-135	Amended	24:14 VA.R. 1925-1928	5/1/08
13 VAC 5-51-143	Added	24:14 VA.R. 1928	5/1/08
13 VAC 5-51-145	Amended	24:14 VA.R. 1932	5/1/08
13 VAC 5-51-150	Amended	24:14 VA.R. 1932	5/1/08
13 VAC 5-51-152	Repealed	24:14 VA.R. 1937	5/1/08
13 VAC 5-51-154	Amended	24:14 VA.R. 1937	5/1/08
13 VAC 5-51-155	Amended	24:14 VA.R. 1939	5/1/08
13 VAC 5-63-10 through 13 VAC 5-63-50	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-70	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-80	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-100 through 13 VAC 5-63-130	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-150	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-160	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-190 through 13 VAC 5-63-260	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-225	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-265	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-267	Added	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-270	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-280	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-300 through 13 VAC 5-63-360	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-335	Added	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-400	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-430	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-432	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-434 through 13 VAC 5-63-450	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-470 through 13 VAC 5-63-500	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-520	Amended	24:14 VA.R. 1941	5/1/08

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13 VAC 5-63-525	Added	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-550	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-91-20	Amended	24:14 VA.R. 1943	5/1/08
13 VAC 5-91-100	Amended	24:14 VA.R. 1943	5/1/08
13 VAC 5-91-110	Repealed	24:14 VA.R. 1944	5/1/08
13 VAC 5-91-115	Added	24:14 VA.R. 1944	5/1/08
13 VAC 5-91-120	Amended	24:14 VA.R. 1944	5/1/08
13 VAC 5-91-160	Amended	24:14 VA.R. 1945	5/1/08
13 VAC 5-91-270	Amended	24:14 VA.R. 1945	5/1/08
13 VAC 5-95-10	Amended	24:14 VA.R. 1947	5/1/08
13 VAC 5-95-30	Amended	24:14 VA.R. 1948	5/1/08
13 VAC 5-112-340	Amended	24:8 VA.R. 979	1/23/08
13 VAC 10-40-20	Amended	24:7 VA.R. 911	11/13/07
13 VAC 10-40-60	Amended	24:7 VA.R. 914	11/13/07
13 VAC 10-40-80	Amended	24:7 VA.R. 915	11/13/07
13 VAC 10-40-100	Amended	24:7 VA.R. 916	11/13/07
13 VAC 10-40-110	Amended	24:7 VA.R. 917	11/13/07
13 VAC 10-40-120	Amended	24:7 VA.R. 917	11/13/07
13 VAC 10-40-130	Amended	24:7 VA.R. 917	11/13/07
13 VAC 10-40-170	Amended	24:7 VA.R. 920	11/13/07
13 VAC 10-40-190	Amended	24:7 VA.R. 920	11/13/07
13 VAC 10-40-210	Amended	24:7 VA.R. 921	11/13/07
13 VAC 10-40-230	Amended	24:7 VA.R. 921	11/13/07
13 VAC 10-180-10	Amended	24:11 VA.R. 1373	2/4/08
13 VAC 10-180-50	Amended	24:11 VA.R. 1374	2/4/08
13 VAC 10-180-60	Amended	24:11 VA.R. 1376	2/4/08
13 VAC 10-180-60	Amended	24:11 VA.R. 1387	2/4/08
13 VAC 10-180-100	Amended	24:11 VA.R. 1397	2/4/08
Title 14. Insurance			
14 VAC 5-30-30	Amended	24:15 VA.R. 2153	4/1/08
14 VAC 5-200-185	Amended	24:15 VA.R. 2155	4/1/08
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 5-270-10 through 14 VAC 5-270-150	Amended	24:12 VA.R. 1460-1470	1/1/10
14 VAC 5-270-144	Added	24:12 VA.R. 1467	1/1/10
14 VAC 5-270-146	Added	24:12 VA.R. 1468	1/1/10
14 VAC 5-270-148	Added	24:12 VA.R. 1469	1/1/10
14 VAC 5-270-170	Amended	24:12 VA.R. 1470	1/1/10
14 VAC 5-270-174	Added	24:12 VA.R. 1470	1/1/10
14 VAC 5-270-180	Amended	24:12 VA.R. 1470	1/1/10
14 VAC 5-420-10 through 14 VAC 5-420-60	Added	24:7 VA.R. 926-931	2/15/08
Title 16. Labor and Employment			
16 VAC 15-21-30	Amended	23:23 VA.R. 3933	8/23/07
16 VAC 25-90-1910.6	Amended	24:1 VA.R. 26	12/15/07
16 VAC 25-90-1910.6	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.66 Appendix D	Amended	24:1 VA.R. 26	12/15/07
16 VAC 25-90-1910.68	Added	24:16 VA.R. 2262	6/1/08

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16 VAC 25-90-1910.94	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.103	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.107	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.110	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.111	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.132	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-90-1910.144	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.243	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.251	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.253	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.261	Added	24:16 VA.R. 2262	6/1/08
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 25-100-1915.152	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-120-1917.96	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-130-1918.106	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-175-1926.95	Added	24:16 VA.R. 2263	6/1/08
Title 18. Professional and Occupational Licensing			
18 VAC 30-20-80	Amended	24:10 VA.R. 1284	2/20/08
18 VAC 30-20-170	Amended	24:10 VA.R. 1284	2/20/08
18 VAC 30-20-171	Amended	24:10 VA.R. 1285	2/20/08
18 VAC 41-70-10 through 18 VAC 41-70-280	Added	23:25 VA.R. 4349-4359	9/20/07
18 VAC 50-30-10	Amended	24:3 VA.R. 416	11/15/07
18 VAC 50-30-40	Amended	24:3 VA.R. 418	11/15/07
18 VAC 50-30-90	Amended	24:3 VA.R. 419	11/15/07
18 VAC 50-30-100	Amended	24:3 VA.R. 419	11/15/07
18 VAC 50-30-120	Amended	24:3 VA.R. 419	11/15/07
18 VAC 50-30-130	Amended	24:3 VA.R. 420	11/15/07
18 VAC 50-30-190	Amended	24:3 VA.R. 421	11/15/07
18 VAC 50-30-200	Amended	24:3 VA.R. 422	11/15/07
18 VAC 50-30-220	Amended	24:3 VA.R. 422	11/15/07
18 VAC 60-20-17	Amended	24:3 VA.R. 424	11/29/07
18 VAC 60-20-71	Amended	23:23 VA.R. 3934	8/22/07
18 VAC 60-20-81	Added	24:14 VA.R. 1949	4/16/08
18 VAC 60-20-108	Amended	24:14 VA.R. 1950	4/16/08
18 VAC 60-20-190	Amended	24:14 VA.R. 1951	4/16/08
18 VAC 60-20-220	Amended	24:10 VA.R. 1287	3/10/08
18 VAC 60-20-220	Amended	24:14 VA.R. 1951	4/16/08
18 VAC 65-10-10 through 18 VAC 65-10-80	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 85-20-22	Amended	24:11 VA.R. 1404	3/5/08
18 VAC 85-20-22	Amended	24:14 VA.R. 1952	4/16/08
18 VAC 85-20-140	Amended	24:1 VA.R. 27	10/17/07
18 VAC 85-20-226	Added	24:11 VA.R. 1404	3/5/08
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	23:23 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

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18 VAC 115-30-150	Amended	24:14 VA.R. 1953	4/16/08
18 VAC 115-30-160	Amended	24:14 VA.R. 1953	4/16/08
18 VAC 85-40-35	Amended	24:11 VA.R. 1404	3/5/08
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
18 VAC 85-40-65	Amended	24:1 VA.R. 28	10/17/07
18 VAC 85-40-67	Added	24:11 VA.R. 1405	3/5/08
18 VAC 85-50-35	Amended	24:11 VA.R. 1405	3/5/08
18 VAC 85-50-58	Amended	24:1 VA.R. 29	10/18/07
18 VAC 85-50-61	Added	24:11 VA.R. 1405	3/5/08
18 VAC 85-80-26	Amended	24:11 VA.R. 1406	3/5/08
18 VAC 85-80-72	Amended	24:1 VA.R. 29	10/18/07
18 VAC 85-80-73	Added	24:11 VA.R. 1406	3/5/08
18 VAC 85-101-25	Amended	24:11 VA.R. 1406	3/5/08
18 VAC 85-101-152	Amended	24:1 VA.R. 30	10/18/07
18 VAC 85-101-153	Added	24:11 VA.R. 1407	3/5/08
18 VAC 85-110-35	Amended	24:11 VA.R. 1407	3/5/08
18 VAC 85-110-155	Amended	24:1 VA.R. 30	10/18/07
18 VAC 85-110-161	Added	24:11 VA.R. 1407	3/5/08
18 VAC 85-120-130	Amended	24:2 VA.R. 229	10/31/07
18 VAC 85-130-30	Amended	24:14 VA.R. 1952	4/16/08
18 VAC 90-20-10	Amended	24:13 VA.R. 1842	4/2/08
18 VAC 90-20-30	Amended	23:25 VA.R. 4363	10/1/07
18 VAC 90-20-35	Amended	24:13 VA.R. 1843	4/2/08
18 VAC 90-20-40 through 18 VAC 90-20-60	Amended	24:13 VA.R. 1843-1845	4/2/08
18 VAC 90-20-65	Repealed	24:13 VA.R. 1844	4/2/08
18 VAC 90-20-70	Amended	24:13 VA.R. 1844	4/2/08
18 VAC 90-20-90	Amended	24:13 VA.R. 1845	4/2/08
18 VAC 90-20-95	Amended	24:13 VA.R. 1846	4/2/08
18 VAC 90-20-96	Added	24:13 VA.R. 1846	4/2/08
18 VAC 90-20-110 through 18 VAC 90-20-140	Amended	24:13 VA.R. 1846-1848	4/2/08
18 VAC 90-20-151	Added	24:13 VA.R. 1848	4/2/08
18 VAC 90-20-160	Amended	24:13 VA.R. 1849	4/2/08
18 VAC 90-20-190	Amended	24:13 VA.R. 1849	4/2/08
18 VAC 90-20-200	Amended	24:13 VA.R. 1850	4/2/08
18 VAC 90-20-220	Amended	24:13 VA.R. 1850	4/2/08
18 VAC 90-20-225	Added	23:25 VA.R. 4364	10/1/07
18 VAC 90-20-230	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-275	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-280	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-300	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-370	Amended	24:13 VA.R. 1852	4/2/08
18 VAC 90-20-390	Amended	24:13 VA.R. 1852	4/2/08
18 VAC 90-20-410	Amended	24:13 VA.R. 1853	4/2/08
18 VAC 90-30-10	Amended	24:10 VA.R. 1288	2/20/08
18 VAC 90-30-120	Amended	24:10 VA.R. 1288	2/20/08
18 VAC 90-30-121	Added	24:10 VA.R. 1289	2/20/08
18 VAC 90-30-240	Added	24:3 VA.R. 427	11/29/07
18 VAC 90-40-100	Amended	24:6 VA.R. 831	1/11/08
18 VAC 90-60-100	Amended	24:3 VA.R. 429	11/29/07

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 95-10-10 through 18 VAC 95-10-80	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 95-20-80	Amended	24:16 VA.R. 2264	5/14/08
18 VAC 95-30-10 through 18 VAC 95-30-210	Added	24:6 VA.R. 832-837	1/2/08
18 VAC 95-30-40	Amended	24:16 VA.R. 2264	5/14/08
18 VAC 105-20-10	Amended	23:22 VA.R. 3791	9/24/07
18 VAC 110-20-10	Amended	24:8 VA.R. 983	1/23/08
18 VAC 110-20-180	Erratum	24:3 VA.R. 444	--
18 VAC 110-20-321	Added	24:8 VA.R. 986	1/23/08
18 VAC 110-20-411 through 18 VAC 110-20-416	Repealed	24:8 VA.R. 986-987	1/23/08
18 VAC 110-20-530	Amended	24:16 VA.R. 2265	5/14/08
18 VAC 110-30-15	Amended	24:10 VA.R. 1290	2/20/08
18 VAC 110-40-10 through 18 VAC 110-40-50	Amended	24:3 VA.R. 430-431	11/14/07
18 VAC 110-50-10	Amended	24:10 VA.R. 1290	2/20/08
18 VAC 110-50-160	Added	24:10 VA.R. 1291	2/20/08
18 VAC 110-50-170	Added	24:10 VA.R. 1291	2/20/08
18 VAC 110-50-180	Added	24:10 VA.R. 1292	2/20/08
18 VAC 110-50-190	Added	24:10 VA.R. 1292	2/20/08
18 VAC 112-20-81 emer	Added	24:4 VA.R. 497	11/1/07-10/31/08
18 VAC 112-20-90 emer	Amended	24:4 VA.R. 497	11/1/07-10/31/08
18 VAC 112-20-130 emer	Amended	24:4 VA.R. 498	11/1/07-10/31/08
18 VAC 112-20-131 emer	Amended	24:4 VA.R. 498	11/1/07-10/31/08
18 VAC 112-20-150 emer	Amended	24:4 VA.R. 499	11/1/07-10/31/08
18 VAC 115-30-150	Amended	24:14 VA.R. 1953	4/16/08
18 VAC 115-30-160	Amended	24:14 VA.R. 1953	4/16/08
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 120-40-60	Repealed	24:3 VA.R. 433	12/29/07
18 VAC 120-40-80 through 18 VAC 120-40-360	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 18 VAC 120-40-411.21	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 125-20-170	Amended	24:12 VA.R. 1471	3/19/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 125-30-120	Amended	24:12 VA.R. 1471	3/19/08
18 VAC 130-20-10	Amended	24:6 VA.R. 838	1/1/08
18 VAC 130-20-30	Amended	24:6 VA.R. 842	1/1/08
18 VAC 130-20-60	Amended	24:6 VA.R. 843	1/1/08
18 VAC 130-20-110	Amended	24:6 VA.R. 844	1/1/08
18 VAC 130-20-170	Amended	24:6 VA.R. 844	1/1/08
18 VAC 130-20-180	Amended	24:6 VA.R. 844	1/1/08
18 VAC 130-20-210	Amended	24:6 VA.R. 846	1/1/08
18 VAC 130-20-220	Amended	24:6 VA.R. 847	1/1/08
18 VAC 130-20-230	Amended	24:6 VA.R. 847	1/1/08
18 VAC 135-20-10	Amended	24:11 VA.R. 1408	4/1/08
18 VAC 135-20-30	Amended	24:11 VA.R. 1409	4/1/08
18 VAC 135-20-60	Amended	24:11 VA.R. 1410	4/1/08
18 VAC 135-20-100	Amended	24:11 VA.R. 1410	4/1/08
18 VAC 135-20-101	Added	24:11 VA.R. 1412	4/1/08
18 VAC 135-20-105	Amended	24:11 VA.R. 1413	4/1/08
18 VAC 135-20-160	Amended	24:11 VA.R. 1413	4/1/08
18 VAC 135-20-170	Amended	24:11 VA.R. 1414	4/1/08
18 VAC 135-20-180	Amended	24:11 VA.R. 1414	4/1/08
18 VAC 135-20-190	Amended	24:11 VA.R. 1416	4/1/08
18 VAC 135-20-210	Amended	24:11 VA.R. 1417	4/1/08
18 VAC 135-20-220	Amended	24:11 VA.R. 1417	4/1/08
18 VAC 135-20-280	Amended	24:11 VA.R. 1417	4/1/08
18 VAC 135-20-300	Amended	24:11 VA.R. 1418	4/1/08
18 VAC 135-20-345	Added	24:11 VA.R. 1418	4/1/08
18 VAC 135-20-360	Amended	24:11 VA.R. 1419	4/1/08
18 VAC 135-20-370	Amended	24:11 VA.R. 1419	4/1/08
18 VAC 135-20-390	Amended	24:11 VA.R. 1420	4/1/08
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 135-60-60	Amended	24:9 VA.R. 1230	3/1/08
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
18 VAC 150-20-30	Amended	24:3 VA.R. 436	11/29/07
18 VAC 150-20-100	Amended	24:3 VA.R. 436	11/29/07
18 VAC 150-20-140	Amended	24:3 VA.R. 437	11/29/07
18 VAC 150-20-220	Added	24:3 VA.R. 438	11/29/07

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 150-20-230	Added	24:3 VA.R. 438	11/29/07
18 VAC 150-20-240	Added	24:3 VA.R. 438	11/29/07
Title 19. Public Safety			
19 VAC 30-20-115	Added	24:11 VA.R. 1421	3/6/08
19 VAC 30-70-6	Amended	24:8 VA.R. 988	3/1/08
19 VAC 30-70-7	Amended	24:8 VA.R. 988	3/1/08
19 VAC 30-70-9	Amended	24:8 VA.R. 989	3/1/08
19 VAC 30-70-10	Amended	24:8 VA.R. 991	3/1/08
19 VAC 30-70-40	Amended	24:8 VA.R. 994	3/1/08
19 VAC 30-70-50	Amended	24:8 VA.R. 995	3/1/08
19 VAC 30-70-60	Amended	24:8 VA.R. 997	3/1/08
19 VAC 30-70-80	Amended	24:8 VA.R. 998	3/1/08
19 VAC 30-70-90	Amended	24:8 VA.R. 1001	3/1/08
19 VAC 30-70-110 through 19 VAC 30-70-660	Amended	24:8 VA.R. 1001-1070	3/1/08
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
19 VAC 30-190-10 through 19 VAC 30-190-140	Added	24:11 VA.R. 1421-1423	3/6/08
Title 20. Public Utilities and Telecommunications			
20 VAC 5-417-10	Amended	24:4 VA.R. 513	10/9/07
20 VAC 5-417-50	Amended	24:4 VA.R. 513	10/9/07
Title 21. Securities and Retail Franchising			
21 VAC 5-10-40	Amended	23:23 VA.R. 3940	7/1/07
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	23:24 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
Title 22. Social Services			
22 VAC 15-30-310	Amended	24:10 VA.R. 1295	3/6/08
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 40-72-55	Added	24:5 VA.R. 616	12/12/07
22 VAC 40-72-367	Added	24:5 VA.R. 616	12/12/07
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 40-375-10 through 22 VAC 40-375-60	Repealed	24:5 VA.R. 616	12/12/07
22 VAC 40-470-10	Amended	24:9 VA.R. 1231	2/6/08
22 VAC 40-685-30	Amended	24:9 VA.R. 1231	2/6/08
22 VAC 40-705-10 emer	Amended	24:14 VA.R. 1987	3/1/08-2/28/09
22 VAC 40-705-30 emer	Amended	24:14 VA.R. 1990	3/1/08-2/28/09
22 VAC 40-770-10 through 22 VAC 40-770-160	Repealed	24:2 VA.R. 234	11/1/07

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 40-771-10 through 22 VAC 40-771-160	Added	24:2 VA.R. 234-242	11/1/07
22 VAC 42-10-10 through 22 VAC 42-10-1000	Repealed	24:6 VA.R. 849	12/28/07
22 VAC 42-11-10 through 22 VAC 42-11-1090	Added	24:6 VA.R. 850-885	12/28/07
Title 23. Taxation			
23 VAC 10-10-10 through 23 VAC 10-10-80	Amended	24:12 VA.R. 1520-1521	4/19/08
23 VAC 10-10-80	Amended	24:12 VA.R. 1521	4/19/08
23 VAC 10-10-90	Repealed	24:12 VA.R. 1522	4/19/08
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
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
Title 24. Transportation and Motor Vehicles			
24 VAC 20-120-10 through 24 VAC 20-120-180	Repealed	24:4 VA.R. 516	1/1/08
24 VAC 20-121-10 through 24 VAC 20-121-220	Adding	24:4 VA.R. 516-529	1/1/08
24 VAC 22-20-10	Amended	24:3 VA.R. 439	12/1/07
24 VAC 22-20-20	Amended	24:3 VA.R. 440	12/1/07
24 VAC 27-10-10 through 24 VAC 27-10-120	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 30-200-10	Amended	24:4 VA.R. 529	11/28/07
24 VAC 30-200-20	Amended	24:4 VA.R. 530	11/28/07
24 VAC 30-200-30	Amended	24:4 VA.R. 531	11/28/07
24 VAC 30-200-35	Added	24:4 VA.R. 532	11/28/07
24 VAC 30-200-40	Amended	24:4 VA.R. 533	11/28/07

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Agency Decision

Title of Regulation: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic.**

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

Name of Petitioner: Dr. Sarwat Siddiqui.

Nature of Petitioner's Request: Amend 18VAC85-20-140 of the regulations, which requires an applicant to pass Parts 1, 2 and 3 of the USMLE within 10 years or to hold board certification.

Agency Decision: Request denied.

Statement of Reasons for Decision: The board decided to retain the requirement for passage of all three steps of USMLE for licensure as a doctor of medicine and surgery because it is consistent with or less restrictive than most other states. Twenty-seven states and the District of Columbia require passage within seven years, two states within five years, 10 states allow 10 years for MD/PhD candidates, and five states, including Virginia, allow 10 years for anyone. Six states (FL, KY, LA, NH, NY and WY) have no limit on the years for passage.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4426, or email william.harp@dhp.virginia.gov.

VA.R. Doc. No. R08-08; Filed April 4, 2008, 9:59 a.m.

REAL ESTATE APPRAISER BOARD

Initial Agency Notice

Title of Regulation: **18VAC130-20. Real Estate Appraiser Board Licensing Regulations.**

Statutory Authority: §54.1-2013 of the Code of Virginia.

Name of Petitioner: George W. Dodd.

Nature of Petitioner's Request: Amend the Real Estate Appraiser regulations to require providers of electronic portals to cease doing business in Virginia until such time as they provide the board with proof that ensures the integrity and unadulterated transmission of appraisal reports from the appraiser to the client.

Agency's Plan for Disposition of the Request: The board will receive public comment on the petition for rulemaking and

make a decision to grant or deny the petition request after review of the comments received.

Comments may be submitted until May 19, 2008.

Agency Contact: Christine Martine, Executive Director, Real Estate Appraiser Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4298, or email reappraisers@dpor.virginia.gov.

VA.R. Doc. No. R08-10; Filed April 16, 2008, 9:59 a.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 12. HEALTH

DEPARTMENT OF HEALTH

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the State Board of Health has WITHDRAWN the Notice of Intended Regulatory for **12VAC5-610, Sewage Handling and Disposal Regulations**, and **12VAC5-611, Onsite Sewage Regulations**, that was published in 22:26 V.A.R. 3988-3989 September 4, 2006.

Agency Contact: Don Alexander, Director, Division of Onsite Sewage and Water Services, Department of Health, 109 Governor St., 5th Floor, Richmond, VA 23219, telephone (804) 864-7452, FAX (804) 864-7476, email don.alexander@vdh.virginia.gov.

VA.R. Doc. No. R06-334; Filed April 9, 2008, 11:34 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR CONTRACTORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Board for Contractors intends to consider amending the following regulations: **18VAC50-22, Board for Contractors Regulations**. The purpose of the proposed action is increase licensing fees for regulants of the Board for Contractors in accordance with the Callahan Act.

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

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

Public Comments: Public comments may be submitted until 5 p.m. on May 28, 2008.

Agency Contact: Eric L. Olson, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Richmond, VA 23233, telephone 804-367-2785, FAX 804-527-4401, or email contractors@dpor.virginia.gov.

VA.R. Doc. No. R08-1169; Filed April 4, 2008, 1:38 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Board for Contractors intends to consider amending the following regulations: **18VAC50-30, Individual License and Certification Regulations**. The purpose of the proposed action is to increase licensing fees

for regulants of the Board for Contractors in accordance with the Callahan Act.

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

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

Public Comments: Public comments may be submitted until 5 p.m. on May 28, 2008.

Agency Contact: Eric L. Olson, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Richmond, VA 23233, telephone 804-367-2785, FAX 804-527-4401, or email contractors@dpor.virginia.gov.

VA.R. Doc. No. R08-1262; Filed April 4, 2008, 1:39 p.m.

BOARD OF DENTISTRY

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Board of Dentistry has WITHDRAWN the Notice of Intended Regulatory Action for **18VAC60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene**, that was published in 21:23 V.A.R. 3175-3176 July 25, 2005.

Contact: Sandra Reen, Executive Director, Board of Dentistry, Perimeter Center, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4538, FAX (804) 527-4475 or email sandra.reen@dhp.virginia.gov.

VA.R. Doc. No. R05-242; Filed March 31, 2008, 10:30 a.m.

REGULATIONS

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

Symbol Key

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

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Fast-Track Regulation

Title of Regulation: **2VAC5-30. Rules and Regulations Pertaining to Reporting Requirements for Contagious and Infectious Diseases of Livestock and Poultry in Virginia (amending 2VAC5-30-10, 2VAC5-30-20).**

Statutory Authority: §§3.1-724 and 3.1-726 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until May 28, 2008.

Effective Date: June 12, 2008.

Agency Contact: Colleen Calderwood, DVM, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2483, FAX (804) 371-2380, TTY (800) 828-1120, or email colleen.calderwood@vdacs.virginia.gov.

Basis: Section 3.1-724 states that the Board of Agriculture and Consumer Services and the State Veterinarian shall have the authority, and that it shall be their duty, to establish rules and regulations to protect domestic animals and poultry from disease.

Section 3.1-726 authorizes the Board of Agriculture and Consumer Services to adopt regulations pertaining to the reporting requirements for contagious and infectious diseases of livestock and poultry in Virginia.

Purpose: The amendments to the regulation have been recommended by the Attorney General's Government and Regulatory Reform Task Force. These amendments will allow for the electronic reporting of contagious and infectious diseases of livestock and poultry in Virginia, providing a more expedited and user-friendly protocol for such reporting than what is currently allowed by the regulations.

The regulation is essential to protect the health, safety or welfare of citizens by providing the basis for reporting and ultimately tracking contagious and infectious diseases associated with Virginia's livestock and poultry industries. Reporting and tracking these diseases is essential for minimizing any economic impact that would be experienced

by the livestock and poultry industries should any such diseases spread. Additionally, many of the diseases of livestock and poultry can be transmitted to humans making their control of significant importance to the health of Virginia's citizens.

Rationale for Using Fast-Track Process: The proposed amendment is believed to be noncontroversial. It is a recommendation of the Attorney General's Government and Regulatory Reform Task Force.

Substance: No substantive changes are being proposed to the existing regulation.

Issues: The advantage to the public, Department of Agriculture and Consumer Services, and others is that the requirement for submitting reports can be carried out in a more efficient manner. There are no disadvantages.

Summary:

The amendment permits the electronic filing of reports of contagious and infectious diseases in livestock and poultry.

2VAC5-30-10. Normal reporting.

Any person practicing veterinary medicine, any person or firm operating a laboratory for the diagnosis of livestock or poultry diseases, and any other reporting entity designated by the State Veterinarian within the Commonwealth of Virginia shall, between the first and tenth day of each month for the month preceding, report to the State Veterinarian the existence of those contagious or infectious diseases among livestock and poultry known to him listed on Schedule B of form VDACS-03016 (8/87), "Reportable Diseases of Virginia Livestock and Poultry." Reports may be filed electronically in a manner specified by VDACS, including, but not limited to, electronic mail or by completing any forms provided online by VDACS.

2VAC5-30-20. Special reporting.

Any person practicing veterinary medicine, any person or firm operating a laboratory for the diagnosis of livestock or poultry diseases, and any other reporting entity designated by the State Veterinarian within the Commonwealth of Virginia shall report within 24 hours by telephone to the State Veterinarian: (i) the existence of anthrax, glanders, or any vesicular or exotic disease or any other disease of livestock or poultry known to him listed on Schedule A of form VDACS-03016 (8/87), "Reportable Diseases of Virginia Livestock and Poultry"; and (ii) the existence of any disease of poultry listed on Schedule A of form VDACS-03016 (8/87), "Reportable

Diseases of Virginia Livestock and Poultry." If for any reason the State Veterinarian is not immediately available by telephone, such report shall be made directly to any veterinarian in the employ of the Commonwealth of Virginia. Reports may be filed electronically in a manner specified by VDACS, including, but not limited to, electronic mail or by completing any forms provided online by VDACS.

VA.R. Doc. No. R08-1025; Filed April 7, 2008, 10:05 a.m.

Fast-Track Regulation

Title of Regulation: 2VAC5-50. Rules and Regulations Governing the Prevention, Control and Eradication of Brucellosis of Cattle in Virginia (amending 2VAC5-50-20, 2VAC5-50-70, 2VAC5-50-100, 2VAC5-50-110).

Statutory Authority: §§3.1-724, 3.1-726, and 3.1-730 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until May 28, 2008.

Effective Date: June 12, 2008.

Agency Contact: Colleen Calderwood, DVM, Program Manager, Office of Veterinary Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2483, FAX (804) 371-2380, TTY (800) 828-1120, or email colleen.calderwood@vdacs.virginia.gov.

Basis: Section 3.1-724 states that the Board of Agriculture and Consumer Services and the State Veterinarian shall have the authority, and that it shall be their duty, to establish rules and regulations to protect domestic animals and poultry from disease. Section 3.1-726 authorizes the Board of Agriculture and Consumer Services to adopt regulations pertaining to the reporting requirements for contagious and infectious diseases of livestock and poultry in Virginia. Section 3.1-730 mandates that the Board of Agriculture and Consumer Services or the State Veterinarian give and enforce directions and prescribe rules and regulations as to separating, feeding, and caring for diseased or exposed animals or poultry as shall be necessary to prevent the animals or poultry affected with disease, or capable of communicating disease, from coming in contact with other animals or poultry not affected.

Purpose: The amendments to the regulation have been recommended by the Attorney General's Government and Regulatory Reform Task Force. These amendments allow for the electronic reporting of required brucellosis information for cattle and provide a more expedited and user-friendly protocol for such reporting than what is allowed by the current regulation. Additionally, the amendments update the

reference to a United States Department of Agriculture regulation to reflect the current name of that regulation.

The regulation is essential to protect the health, safety or welfare of citizens by providing the basis for reporting brucellosis information for cattle that is necessary to prevent, control and eradicate brucellosis in Virginia. Reporting and tracking of this disease is essential to minimize any economic impact that would be experienced by the cattle industry should this disease not be controlled. Additionally, brucellosis can be transmitted to humans, making its control of significant importance to the health of Virginia's citizens.

Rationale for Using Fast-Track Process: The proposed amendment is believed to be noncontroversial. It is a recommendation of the Attorney General's Government & Regulatory Reform Task Force.

Substance: No substantive changes are being proposed to the existing regulation.

Issues: The advantage to the public, Department of Agriculture and Consumer Services, and others is that the requirement for submitting reports can be carried out in a more efficient manner. There are no disadvantages.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Agriculture and Consumer Services (Board) proposes to amend its regulations that govern the prevention and control of brucellosis in cattle to clarify that reports required by these regulations can be filed electronically.

Result of Analysis. The benefits likely exceed the costs for this proposed change.

Estimated Economic Impact. Current regulations require that Virginia Department of Agriculture and Consumer Services (VDACS) regional staff report any instances of cattle that are diagnosed with brucellosis to VDACS' central office. Current regulations also require veterinarians, or other vaccinating entities, to report all brucellosis vaccinations of calves to the state veterinarian. Although these regulations are currently silent on how disease and vaccination reports must be filed, and no instances of this disease have had to be reported in the state in several years, the state veterinarian does currently accept electronically filed reports for vaccinations.

The Board proposes to update these regulations so that electronic filing is explicitly allowed. Because electronic reports are already accepted, neither VDACS nor the state veterinarian is likely to incur any costs on account of this regulatory change. Interested individuals who may not have known that reports could be filed electronically will benefit from the clarity that the proposed language will add to these regulations.

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Businesses and Entities Affected. This proposed regulatory change will affect all veterinarians who vaccinate calves against brucellosis as well as VDACS regional staff. VDACS reports that there are 2345 veterinarians who currently hold active licenses issued by the Commonwealth.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action will likely have no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have no effect 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 costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no effect 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 agency concurs with the analysis of the Department of Planning and Budget.

Summary:

The amendments permit the filing of reports electronically and update the name of a federal document incorporated by reference.

2VAC5-50-20. Identifying, quarantining, and branding reactor cattle.

Cattle declared to be reactors to the official test for brucellosis, or cattle declared to be reactors to any other tests specifically authorized by the State Veterinarian, shall be effectively identified as such. Such cattle shall be immediately tagged with a metal tag in the left ear, bearing the inscription Virginia B.D. or U.S.B.D., quarantined, and promptly reported to the State Veterinarian. Before such animals are permitted to leave the premises where tested, they shall be branded with the letter "B" not less than two inches high on the left jaw. Reports may be filed electronically in a manner specified by VDACS, including, but not limited to, electronic mail or by completing any forms provided online by VDACS.

2VAC5-50-70. Calfhood vaccination; identification of vaccinated calves; report required.

Official calfhood vaccination for brucellosis shall mean the injection into a female bovine of not less than four months of age nor more than 12 months of age, by an accredited veterinarian or veterinarian in the employ of the state or federal government of a reduced dose of Brucella abortus strain 19 vaccine diluted as approved by the State Veterinarian. At the time cattle are vaccinated, the veterinarian shall apply an official vaccination tag in the right ear, provided no other tag has been previously applied, and apply to the right ear of the vaccinated animal a tattoo containing the United States Registered Shield and V, preceded by a number indicating the quarter of the year and followed by a number corresponding to the last digit of the year in which the vaccination was done. A report of each vaccination shall be made promptly to the State Veterinarian on a form supplied by him. Reports may be filed electronically in a manner specified by VDACS, including, but not limited to, electronic mail or by completing any forms provided online by VDACS.

2VAC5-50-100. Classification status of brucellosis in Virginia.

Brucellosis Classification in the Commonwealth of Virginia shall be governed by the United States Department of Agriculture's Animal and Plant Health Inspection Service as specified in the "Uniform Methods and Rules for Brucellosis Eradication"; recommended "Brucellosis Eradication: Uniform Methods and Rules," effective October 1, 2003.

2VAC5-50-110. Depopulation of brucellosis infected herds.

Brucellosis infected herds may be depopulated where approved by the State Veterinarian provided funds are available to compensate the owner; or, the owner may follow a test and slaughter program as outlined in the "~~Uniform Methods and Rules for Brucellosis Eradication~~", recommended "Brucellosis Eradication: Uniform Methods and Rules," effective October 1, 2003, or by procedures established by the State Veterinarian. Reports may be filed electronically in a manner specified by VDACS, including, but not limited to, electronic mail or by completing any forms provided online by VDACS.

DOCUMENTS INCORPORATED BY REFERENCE

~~Uniform Methods and Rules for Brucellosis Eradication.~~

Brucellosis Eradication: Uniform Methods and Rules, APHIS 91-45-013, effective October 1, 2003, U.S. Department of Agriculture, Animal and Plant Health Inspection Service.

VA.R. Doc. No. R08-1026; Filed April 7, 2008, 10:04 a.m.

Fast-Track Regulation

Title of Regulation: **2VAC5-90. Control and Eradication of Pullorum Disease and Fowl Typhoid in Poultry Flocks and Hatcheries and Products Thereof in Virginia (amending 2VAC5-90-30).**

Statutory Authority: §§3.1-724, 3.1-726, and 3.1-730 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until May 28, 2008.

Effective Date: June 12, 2008.

Agency Contact: Colleen Calderwood, DVM, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2483, FAX (804) 371-2380, (800) 828-1120/TTY, or email colleen.calderwood@vdacs.virginia.gov.

Basis: Section 3.1-724 of the Code of Virginia states that the Board of Agriculture and Consumer Services and the State Veterinarian shall have the authority, and that it shall be their duty, to establish rules and regulations to protect domestic animals and poultry from disease. Section 3.1-726 of the Code of Virginia authorizes the Board of Agriculture and Consumer Services to adopt regulations pertaining to the reporting requirements for contagious and infectious diseases of livestock and poultry in Virginia. Section 3.1-730 of the Code of Virginia mandates that the Board of Agriculture and Consumer Services or the State Veterinarian give and enforce

directions and prescribe rules and regulations as to separating, feeding, and caring for diseased or exposed animals or poultry as shall be necessary to prevent the animals or poultry affected with disease, or capable of communicating disease, from coming in contact with other animals or poultry not affected.

Purpose: Amendments to the regulation have been recommended by the Attorney General's Government and Regulatory Reform Task Force. These amendments will update the reference to a United States Department of Agriculture regulation to reflect the current name of that regulation.

The regulation is essential to protect the health, safety or welfare of the poultry industry in Virginia by controlling and eradicating pullorum disease and fowl typhoid. Control and eradication of these diseases are essential to minimize any economic impact that would be experienced by the poultry industry should these diseases not be controlled.

Rationale for Using Fast-Track Process: The proposed amendment is believed to be noncontroversial. It is a recommendation of the Attorney General's Government and Regulatory Reform Task Force.

Substance: No substantive changes are being proposed to the existing regulation.

Issues: The advantage to the public, Department of Agriculture and Consumer Services, and others is that the language of this regulation is updated to reflect the name change for the National Poultry Improvement Plan. There are no disadvantages.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Agriculture and Consumer Services (Board) proposes to amend its regulation for pullorum disease and fowl typhoid control and eradication to update references to the United States Department of Agriculture's (USDA's) National Poultry Improvement Plan.

Result of Analysis. The benefits likely exceed the costs for this proposed change.

Estimated Economic Impact. Since this regulation was last amended, the USDA changed the name of its *National Poultry Improvement Plan* to *National Poultry Improvement Plan for Breeding Poultry*. The Board proposes to update references to this program so that the regulation for Control and Eradication of Pullorum Disease and Fowl Typhoid in Poultry Flocks and Hatcheries and Products Thereof in Virginia reflects this change. Regulated entities will likely not incur any costs on account of this proposed regulatory change. To the extent that any individual may have been confused by the difference in name for the USDA program

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(between Virginia and federal regulations), this proposed regulation provides the benefit of added clarity.

Businesses and Entities Affected. The Virginia Department of Agriculture and Consumer Services reports that there are currently 51 egg hatcheries and owners of independent fowl flocks who participate in the National Poultry Improvement Plan.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action will likely have no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have no effect 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 costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no effect 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 agency concurs with the analysis of the Department of Planning and Budget.

Summary:

This amendment changes the title of the National Poultry Improvement Plan to the "National Poultry Improvement Plan for Breeding Poultry."

2VAC5-90-30. Poultry flock requirements.

All poultry flocks from which hatching eggs are set in any Virginia hatchery must be in compliance with the current pullorum-typhoid provisions of the National Poultry Improvement Plan- for Breeding Poultry (9 CFR §§145.1 through 145.54).

VA.R. Doc. No. R08-1027; Filed April 1, 2008, 10:39 a.m.

Fast-Track Regulation

Title of Regulation: **2VAC5-150. Rules and Regulations Governing the Transportation of Companion Animals (amending 2VAC5-150-10).**

Statutory Authority: §3.1-796.67 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until May 28, 2008.

Effective Date: June 12, 2008.

Agency Contact: Colleen Calderwood, DVM, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2483, FAX (804) 371-2380, TTY (800) 828-1120, or email colleen.calderwood@vdacs.virginia.gov.

Basis: Section 3.1-796.67 of the Code of Virginia authorizes the board to promulgate rules and regulations or guidelines consistent with the objectives and intent of Chapter 27.4 (§3.1-796.66 et seq.) of Title 3.1 of the Code of Virginia concerning the care and transportation of animals.

Purpose: Amendments to the regulation have been recommended by the Attorney General's Government and Regulatory Reform Task Force. These amendments will make the definitions of companion animal, dealer, exhibitor, and primary enclosure consistent with corresponding definitions contained in the Code of Virginia. The regulation is essential to protect the welfare of companion animals being transported within the Commonwealth of Virginia. The requirements of the regulation are essential to minimize any suffering of companion animals while those animals are being transported within the state.

Rationale for Using Fast-Track Process: The proposed amendments are believed to be noncontroversial. It is a

recommendation of the Attorney General's Government and Regulatory Reform Task Force.

Substance: No substantive changes are being proposed to the existing regulation.

Issues: The advantage to the public, Department of Agriculture and Consumer Services, and others is that the definitions for companion animal, dealer, exhibitor, and primary enclosure will be consistent with the definitions contained in the Code of Virginia. There are no disadvantages.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed regulations will replace several current definitions included in these regulations with the definitions in the Code of Virginia.

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

Estimated Economic Impact. Virginia Department of Agriculture and Consumer Services (VDACS) proposes to replace current definitions of "Companion Animals," "Dealer," "Exhibitor," and "Primary Enclosure" included in these regulations with the definitions in the Code of Virginia.

VDACS proposes these changes in response to one of the recommendations made by the Attorney General's Government and Regulatory Reform Task Force who determined that definitions of "Companion Animals," "Dealer," "Exhibitor," and "Primary Enclosure" are somewhat inconsistent with the definitions in the authorizing code sections. In response, the proposed regulations will replace the current definitions with the definitions in the Code of Virginia.

According to VDACS the proposed changes in definitions will not result in any changes in practice and they are proposed for consistency between the regulations and the Code of Virginia. Thus, no significant economic is expected from the proposed regulations other than avoiding possible confusions that may arise from the slightly different definitions between the regulations and the Code of Virginia.

Businesses and Entities Affected. The proposed regulations are estimated to apply to approximately 2,500 carriers, dealers, exhibitors, pet shops, auction sales, pounds, cities, counties, animal control officers, and humane societies.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. No effect on employment is expected.

Effects on the Use and Value of Private Property. No effect on the use and value of private property is expected.

Small Businesses: Costs and Other Effects. Approximately 90 percent of the affected entities are estimated to be small businesses. However, no small business costs or other effects are anticipated.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No adverse effects on small businesses are expected.

Real Estate Development Costs. No real estate development costs are anticipated.

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 agency concurs with the analysis of the Department of Planning and Budget.

Summary:

The amendments make the definitions of companion animal, dealer, exhibitor, and primary enclosure consistent with corresponding definitions contained in the Code of Virginia.

2VAC5-150-10. Definitions.

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

"Animal holding area" means any part of the terminal facility where animals are kept, maintained, or housed.

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"Carrier" means the operator of any airline, railroad, motor carrier, shipping line, or other enterprise which, for hire, engages in the business of transporting animals.

"Commerce" means trade, traffic or transportation.

~~"Companion animals" means domestic and feral dogs, domestic and feral cats, monkeys, guinea pigs, hamsters, rabbits, exotic animals and exotic and native birds. Game species shall not be considered companion animals for the purposes of this chapter.~~

"Companion animal" means any domestic or feral dog, domestic or feral cat, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or any animal under the care, custody, or ownership of a person or any animal that is bought, sold, traded, or bartered by any person. Agricultural animals, game species, or any animals regulated under federal law as research animals shall not be considered companion animals for the purposes of this chapter.

"Dealer" means any person who in the regular course of business for compensation or profit buys, sells, transfers, exchanges or barter companion animals. ~~Any person who transfers companion animals in the regular course of business as a common carrier shall not be considered a dealer. The following shall not be considered dealers: (i) any person who transports companion animals in the regular course of business as a common carrier, or (ii) any person or organization whose primary purpose is to find permanent adoptive homes for companion animals.~~

"Exhibitor" means any person ~~exhibiting any animals to the public, and such who has animals for or on public display, excluding an exhibitor licensed by the United States Department of Agriculture. Such~~ term includes carnivals, circuses, animal acts, and zoos exhibiting such animals, whether operated for profit or not; but such term excludes retail pet stores, organizations sponsoring and all persons participating in state and county fairs, livestock shows, rodeos, purebred dog and cat shows, and any other fairs or exhibits intended to advance agricultural arts and sciences.

"Exotic animal" means any animal that is not a species native to the United States.

"Handling" means petting, feeding, manipulating, crating, shifting, transferring, immobilizing, restraining, treating, training, working or performing any similar activity with respect to any animal.

"Humane society" means any chartered not-for-profit organization incorporated under the laws of this Commonwealth and organized for the purpose of preventing cruelty to animals and promoting humane care and treatment of animals.

"Intermediate handler" means any person, including a department, agency, or instrumentality of the United States or of any state or local government who is engaged in any business in which he receives custody of animals in connection with their transportation in commerce.

"Pound" means a facility operated by the Commonwealth, or any political subdivision for the purpose of impounding or harboring seized, stray, homeless, abandoned or unwanted animals; or a facility operated for the same purpose under a contract with any county, city, town or incorporated society for the prevention of cruelty to animals.

"Primary conveyance" means the main method of transportation used to convey an animal from origin to destination, such as a motor vehicle, plane, ship or train.

"Primary enclosure" means any structure used to immediately restrict an animal or animals to a limited amount of space, such as a room, pen, cage, compartment or hutch. For tethered animals, the term includes the shelter and the area within reach of the tether.

"Terminal facility" means any building or structure, and its grounds, which serves as a point of ingress to or egress from a primary conveyance during transportation.

VA.R. Doc. No. R08-1029; Filed April 7, 2008, 10:06 a.m.

Fast-Track Regulation

Title of Regulation: 2VAC5-180. Rules and Regulations Governing Pseudorabies in Virginia (amending 2VAC5-180-20, 2VAC5-180-30, 2VAC5-180-50, 2VAC5-180-60, 2VAC5-180-80, 2VAC5-180-120).

Statutory Authority: §§3.1-724, 3.1-726, and 3.1-730 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until May 28, 2008.

Effective Date: June 12, 2008.

Agency Contact: Colleen Calderwood, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2483, FAX (804) 371-2380, TTY (800) 828-1120, or email colleen.calderwood@vdacs.virginia.gov.

Basis: Section 3.1-724 states that the Board of Agriculture and Consumer Services and the State Veterinarian shall have the authority, and that it shall be their duty, to establish rules and regulations to protect domestic animals and poultry from disease. Section 3.1-726 authorizes the Board of Agriculture and Consumer Services to adopt regulations pertaining to the reporting requirements for contagious and infectious diseases of livestock and poultry in Virginia. Section 3.1-730 mandates that the Board of Agriculture and Consumer

Services or the State Veterinarian give and enforce directions and prescribe rules and regulations as to separating, feeding, and caring for diseased or exposed animals or poultry as shall be necessary to prevent the animals or poultry affected with disease, or capable of communicating disease, from coming in contact with other animals or poultry not affected.

Purpose: Amendments to the regulation are those that have been recommended by the Attorney General's Government and Regulatory Reform Task Force. These amendments will allow for the electronic registration of swine dealers doing business in Virginia, providing a more expedited and user-friendly protocol for such registration than what is allowed by the current regulation. Additionally, the amendments will update the reference to the "Cooperative State-Federal-Industry Pseudorabies Eradication Program Standards" to reflect the current version of those standards.

The regulation is essential to protect the welfare of citizens and Virginia's swine industry by providing the basis for controlling the spread of pseudorabies in Virginia. Pseudorabies is primarily a disease in swine, and the regulation is necessary to prevent, control the spread of, and eradicate the disease. The requirements of the regulation are essential to minimize any economic impact that would be experienced by the swine industry should this disease not be controlled.

Rationale for Using Fast-Track Process: The proposed amendment is believed to be noncontroversial. It is a recommendation of the Attorney General's Government and Regulatory Reform Task Force.

Substance: No substantive changes are being proposed to the existing regulation.

Issues: The advantage to the public, Department of Agriculture and Consumer Services, and others is that the requirement for registration of swine dealers doing business in Virginia can be carried out in a more efficient manner, and that the pseudorabies eradication standards that are adopted by reference will be the most up-to-date version. There are no disadvantages.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Agriculture and Consumer Services (Board) proposes to amend its regulations that govern pseudorabies eradication to update a document incorporated by reference and to clarify that required documents can be filed electronically.

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

Estimated Economic Impact. Currently, Board regulations that govern pseudorabies policy and procedures reference the

"Cooperative State-Federal-Industry Pseudorabies Eradication Program Standards" but do not specify which version of these standards are to be incorporated. Additionally, these regulations currently require swine dealers to register with the state veterinarian. Although registration requirements are currently silent on how registration applications must be filed, the state veterinarian does currently accept electronically filed forms.

The Board proposes to update these regulations so that electronic filing is explicitly allowed and to specify that the standards incorporated are those dating from November, 2003. Because electronic applications are already accepted, neither the Virginia Department of Agriculture and Consumer Services (VDACS) nor the state veterinarian is likely to incur any costs on account of this regulatory change. Interested individuals who may not have known that applications could be filed electronically will benefit from the clarity that the proposed language will add to these regulations. Additionally, interested individuals who may not have known which version of the "Cooperative State-Federal-Industry Pseudorabies Eradication Program Standards" was incorporated will benefit from having dates added to these regulations.

Businesses and Entities Affected. VDACS reports that there are currently 458 livestock dealers, 855 swine producers, 31 livestock markets and 20 swine slaughter facilities in the Commonwealth. All of these entities are affected by these regulatory changes.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action will likely have no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely not affect 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 costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no affect 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

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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 agency concurs with the analysis of the Department of Planning and Budget.

Summary:

The amendments to the regulation have been recommended by the Attorney General's Government and Regulatory Reform Task Force. These amendments allow for the electronic registration of swine dealers doing business in Virginia, providing a more expedited and user-friendly protocol for such registration than what is allowed by the current regulation. Additionally, the amendments update the reference to the "Cooperative State-Federal-Industry Pseudorabies Eradication Program Standards" to reflect the current version of those standards. The regulation is essential to protect the welfare of citizens and Virginia's swine industry by providing the basis for controlling the spread of pseudorabies in Virginia. Pseudorabies is primarily a disease in swine, and the regulation is necessary to prevent, control the spread of, and eradicate the disease. The requirements of the regulation are essential to minimize any economic impact that would be experienced by the swine industry should this disease not be controlled.

2VAC5-180-20. Feeder pigs.

A. Any person shipping, selling, lending, leasing or trading feeder pigs in Virginia; and any person offering to ship, sell, lend, lease, or trade feeder pigs in Virginia shall assure that they are a direct shipment and:

1. Originate from a farm in a Stage III, Stage IV or Stage V state/area as specified by the ~~Cooperative~~ Pseudorabies

State-Federal-Industry ~~Pseudorabies Eradication~~ Program Standards published by the U.S. Department of Agriculture (~~January 1, 1998~~) (effective November 1, 2003);

2. Originate from a market in a Stage IV or Stage V state/area as specified by the ~~Cooperative~~ Pseudorabies State-Federal-Industry ~~Pseudorabies Eradication~~ Program Standards (effective November 1, 2003);

3. Originate from a pseudorabies monitored herd;

4. Originate from a qualified pseudorabies negative herd; or

5. Are individually tested and found negative for pseudorabies within 30 days prior to the shipment.

B. Identification of swine. All producers of feeder pigs subject to this chapter shall have swine from their production herds individually identified by eartag, tattoo, standard ear notch that has been recorded in the book of record of a purebred registry association, or by any other method approved by the State Veterinarian.

C. Pseudorabies monitored herd procedures.

1. To certify a feeder pig production herd as a pseudorabies monitored herd, a producer shall have the herd tested and found to be negative for pseudorabies, with the testing to be of a representative sample of the herd. In addition, the producer shall test all boars in the herd. The sample size shall be as follows:

a. In herds of 10 sows or fewer, all sows shall be tested;

b. In herds of 11 to 35 sows, 10 sows shall be tested; and

c. In herds of 36 sows or more, 30% of sows or 30 sows, whichever is fewer, shall be tested.

2. To continue pseudorabies monitored herd status, a producer shall have each initially certified feeder pig production herd recertified annually by utilizing the sample size specified in subdivision C 1 of this section. The sample for recertification shall also include all boars and 30% of the sows added to the feeder pig production herd since the last certification test. The recertification date shall be no more than 30 days before and no more than 30 days after the anniversary date of the initial herd certification pursuant to subdivision C 1 of this section.

D. Qualified pseudorabies negative herd procedures.

1. To have a swine herd meet the requirements of a qualified pseudorabies negative herd, a producer shall subject all swine over six months of age in the herd to an official pseudorabies serologic test. All swine so tested must be found negative.

2. To maintain qualified pseudorabies negative herd status, a producer shall subject all swine over six months of age in the herd to an official pseudorabies serologic test at least

once each year. The test shall be accomplished by testing 25% of swine over six months of age every 80-105 days and finding all swine so tested to be negative. No swine may be tested twice in one year to comply with the 25% requirement.

3. A producer may also obtain qualified pseudorabies negative herd status by any means authorized by 9 CFR Part 85.

E. Proof of herd-health status. Proof of herd-health status for feeder pig production herds and feeder pigs shall be by one of the following methods:

1. A current Swine Herd Health Card for Pseudorabies (VDACS-03024) issued by the State Veterinarian or other proof, specified by the State Veterinarian, of being a pseudorabies negative herd; or

2. An official pseudorabies test chart identifying the individual feeder pigs offered in the transaction or shipment and indicating that they have been tested and found to be negative for pseudorabies within the past 30 days.

F. Exemptions to subsections C, D, and E of this section. Producers are exempt from the requirements of subsections C, D, and E of this section while Virginia is designated as a Stage IV or Stage V state as specified by the Cooperative Pseudorabies State-Federal-Industry Pseudorabies Eradication Program Standards (effective November 1, 2003).

2VAC5-180-30. Breeder swine.

A. Any person shipping, selling, lending, leasing, or trading breeder swine in Virginia; and any person offering to ship, sell, lend, lease or trade breeder swine in Virginia shall assure that they:

1. Originate directly from a Stage IV or Stage V state/area as specified by the Cooperative Pseudorabies State-Federal-Industry Pseudorabies Eradication Program Standards (effective November 1, 2003);

2. Originate directly from a qualified pseudorabies negative herd; or

3. Are individually tested and found negative for pseudorabies within 30 days prior to shipment, and are isolated and quarantined at destination, and retested in 30 to 60 days.

B. Identification of breeder swine. All producers of breeder swine subject to this chapter shall have their swine individually identified by eartag, tattoo, standard ear notch that has been recorded in the book of record of a purebred registry association, or by any other method approved by the State Veterinarian.

2VAC5-180-50. Exhibition swine.

Any person exhibiting swine shall assure that they:

1. (i) Originate directly from a farm in a Stage IV or Stage V state/area as specified by the Cooperative Pseudorabies State-Federal-Industry Pseudorabies Eradication Program Standards (effective November 1, 2003); (ii) originate directly from a qualified pseudorabies negative herd; or (iii) are individually tested and found negative for pseudorabies within 30 days prior to the exhibition; and

2. Are individually identified by eartag, tattoo, standard ear notch that has been recorded in the book of record of a purebred registry association, or by any other method approved by the State Veterinarian.

2VAC5-180-60. Surveillance.

A. All slaughter establishments doing business in Virginia shall cooperate with the State Veterinarian in the annual testing pursuant to the Cooperative Pseudorabies State-Federal-Industry Pseudorabies Eradication Program Standards (effective November 1, 2003) of Virginia's breeder swine population for pseudorabies using an official pseudorabies serologic test with 80% successful traceback of seropositives to the farm of origin, or testing and traceback to achieve a surveillance index of 0.08%. The State Veterinarian shall use current statistics of the National Agricultural Statistics Service of the United States Department of Agriculture on breeding swine populations in calculating surveillance data. The surveillance program shall be random and shall be representative of all herds in the Commonwealth.

B. Every swine producer within a 1.5 mile radius of any pseudorabies-infected premises shall have his herd tested through the use of the official random sample test procedure as specified below.

- 1. In herds of fewer than 100 head, 25 shall be tested;
- 2. In herds of 100 to 200 head, 27 shall be tested;
- 3. In herds of 201 to 999 head, 28 shall be tested; and
- 4. In herds of 1,000 head or more, 29 shall be tested.

2VAC5-180-80. Mandatory herd cleanup.

The State Veterinarian is authorized to quarantine pseudorabies-infected and -exposed swine and take measures to eliminate pseudorabies from such swine in Virginia, utilizing a herd cleanup plan. Any person in whose swine herd pseudorabies is diagnosed shall cooperate with the State Veterinarian in instituting one of the following herd cleanup plans:

1. Test and removal of infected swine. A producer may remove from his herd all swine positive to an official test to either a quarantined area or an approved slaughter establishment. The remaining swine in the herd shall be

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quarantined and shall pass a negative official pseudorabies serologic test at least 30 days after the removal of the infected swine in order for the quarantine to be released.

2. Offspring segregation. A producer shall isolate progeny from a quarantined herd which shall be weaned, under the direction of the State Veterinarian, and they shall pass two negative official pseudorabies serologic tests at least 30 days apart in order for the quarantine to be released.

3. Depopulation - Repopulation. A producer may sell his entire swine herd for slaughter. The producer shall clean and disinfect the premises at least 30 days prior to repopulation.

4. Other herd cleanup plans. The Virginia Board of Agriculture and Consumer Services delegates to the State Veterinarian the authority to approve additional herd cleanup plans that meet the requirements of the Cooperative Pseudorabies State-Federal-Industry Pseudorabies Eradication Program Standards (effective November 1, 2003).

2VAC5-180-120. Requirements for swine dealers; requirements for agents.

A. Registration. Every swine dealer doing business in Virginia and his agents shall be registered with the State Veterinarian; each shall make application for registration on forms provided by the State Veterinarian and each shall renew his registration no later than March 1 of each even-numbered year thereafter. Registrations may be filed electronically in a manner specified by VDACS, including, but not limited to, electronic mail or by completing any forms provided online by VDACS. The State Veterinarian will issue a registration card to each registered swine dealer and to each of his agents. Every swine dealer and every agent shall have the card in his possession while engaged in the business of dealing in swine, and show the card to the State Veterinarian or his representative when asked to do so.

B. Records requirement. Every registered swine dealer shall maintain a record of all swine that he purchases, sells, exchanges, or barter in the course of business.

C. Contents of records. The records required by subsection B of this section shall include the following information, which shall be recorded daily for each transaction of that day:

1. The date of the transaction;
2. The manmade identification affixed or applied to each swine;
3. The name and address of the seller, and in addition, if different, the name and address of the producer;
4. The name and address of the purchaser, and in addition, if different, the name and address of the ultimate purchaser;

5. The purpose of the swine involved in the transaction, using one or more of the following designations:

- a. Feeder;
- b. Breeder;
- c. Slaughter; or
- d. Exhibition.

D. Retention of records. The swine dealer shall keep in his possession for a period of two years after each transaction the records pertaining to that transaction required by subsections B and C of this section.

E. Inspection of records. Every swine dealer doing business in Virginia shall, during all reasonable hours, permit the State Veterinarian or his representative to have access to and to copy any and all records maintained pursuant to this chapter.

F. Out-of-state swine. Any swine dealer importing swine into Virginia shall comply with the health requirements governing the admission of swine into Virginia contained in ~~2VAC5-140-10 et seq~~ 2VAC5-140. The swine dealer shall deliver a copy of the official health certificate to the purchaser.

G. Denial, suspension, or cancellation of registration of dealer; agent.

1. The State Veterinarian may, after due notice and opportunity for hearing to the swine dealer involved, deny the dealer's application for registration, or suspend or cancel his registration, when the State Veterinarian has determined that the swine dealer has:

- a. Violated state or federal statutes or regulations governing the interstate or intrastate movement, shipment or transportation of swine;
- b. Made false or misleading statements in his application for registration;
- c. Sold swine that he knew or should have known were sick or exposed to infectious or contagious disease;
- d. Knowingly made false or misleading entries in the records required by this chapter;
- e. Failed to comply with any provision of this chapter; or
- f. Directed or authorized any agent to engage in any conduct described in subdivisions a through e, above, or knew or should have known that the agent is engaging in such conduct, but has failed to prohibit it.

2. The State Veterinarian may, after due notice and opportunity for hearing to the agent of a swine dealer, deny or suspend the agent's application for registration, when the State Veterinarian has determined that the agent has:

- a. Violated state or federal statutes or regulations governing the interstate or intrastate movement, shipment, or transportation of swine;
- b. Made false or misleading statements in his application for registration;
- c. Sold swine that he knew or should have known were sick or exposed to infectious or contagious disease;
- d. Knowingly made false or misleading entries in the records required by this chapter;
- e. Failed to comply with any provision of this chapter; or
- f. Ceased to be an agent of a registered swine dealer.

DOCUMENTS INCORPORATED BY REFERENCE

Pseudorabies Eradication Program Standards, APHIS 91-55-071, effective January 1, 1998 November 1, 2003, by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service.

VA.R. Doc. No. R08-1030; Filed April 7, 2008, 10:07 a.m.

Fast-Track Regulation

Title of Regulation: **2VAC5-400. Rules and Regulations for the Enforcement of the Virginia Fertilizer Law (adding 2VAC5-400-5).**

Statutory Authority: §3.1-106.4 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until May 28, 2008.

Effective Date: June 12, 2008.

Agency Contact: Robert E. Bailey, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1274, FAX (804) 786-1571, TTY (800) 828-1120, or email robert.bailey@vdacs.virginia.gov.

Basis: Section 3.1-106.4 of the Code of Virginia gives the Board of Agriculture and Consumer Services authority to promulgate regulations as may be necessary to carry out the Virginia Fertilizer Act.

Purpose: The addition of 2VAC5-400-5 to 2VAC5-400, Rules and Regulations for the Enforcement of the Virginia Fertilizer Law, is necessary to meet the requirement specified in §3.1-106.4 B of the Virginia Fertilizer Law.

Rationale for Using Fast-Track Process: The proposed amendment to 2VAC5-400, Rules and Regulations for the Enforcement of the Virginia Fertilizer Law, is considered noncontroversial and is required by statute.

Substance: The proposed amendment to 2VAC5-400, Rules and Regulations for the Enforcement of the Virginia Fertilizer Law, authorizes the Board of Agriculture and Consumer Services to receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of regulation promulgated under the Virginia Fertilizer Law.

Issues: The advantage of the amendment is that the regulation will now meet the requirement of §3.1-106.4 B of the Code of Virginia, which requires that the regulation have a preamble. There are no disadvantages to the public or the Commonwealth.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. In order to comply with §3.1-106.4 of the Code of Virginia, the Board of Agriculture and Consumer Services (Board) proposes to add the following preamble to these regulations: "The Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of such regulation."

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

Estimated Economic Impact. Since the preamble language is already in the Code of Virginia and according to the Department of Agriculture and Consumer Services describes current policy, adding it to the regulation will have no impact beyond perhaps providing some clarification for the public. To the extent that a portion of the public affected by these regulations is not aware of the opportunity to potentially affect the regulations through petitions, adding the preamble will create a small benefit.

Businesses and Entities Affected. The Rules and Regulations for the Enforcement of the Virginia Fertilizer Law affect the 480 fertilizer manufacturers licensed to do business in Virginia and the 550 fertilizer applicators licensed in the Commonwealth.¹

Localities Particularly Affected. The proposed additional language does not particularly affect specific localities.

Projected Impact on Employment. The proposed additional language will not affect employment.

Effects on the Use and Value of Private Property. The proposed additional language will not significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed additional language will not significantly affect small businesses.

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Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed additional language will not significantly affect small businesses.

Real Estate Development Costs. The proposed additional language will not significantly affect real estate development costs.

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.

¹ Source: Department of Agriculture and Consumer Services

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

Summary:

The Office of the Attorney General's Regulatory Reform Task Force recommended that a preamble be added to the regulation as required by statute. Section 3.1-106.4 B of the Code of Virginia authorizes the Board of Agriculture and Consumer Services to promulgate regulations and directs that the regulation shall contain a preamble stating: "The Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of such regulation." This amendment adds that preamble by adding 2VAC5-400-5 to the regulation.

2VAC5-400-5. Preamble.

The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of such regulation.

VA.R. Doc. No. R08-1064; Filed April 7, 2008, 10:09 a.m.

Fast-Track Regulation

Title of Regulation: 2VAC5-501. Regulations Governing the Cooling, Storing, Sampling and Transporting of Milk (amending 2VAC5-501-80, 2VAC5-501-100).

Statutory Authority: §§3.1-530.1, 3.1-530.2, 3.1-535, and 3.1-535.1 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until May 28, 2008.

Effective Date: June 12, 2008.

Agency Contact: John Beers, Program Manager, Office of Dairy and Foods, Department of Agriculture and Consumer Services, 102 Governor Street, Suite 349, Richmond, VA 23219, telephone (804) 786-1452, FAX (804) 371-7792, TTY 1-800-832-1120, or email john.beers@vdacs.virginia.gov.

Basis: Sections 3.1-530.1, 3.1-530.2, 3.1-535, and 3.1-535.1 of the Code of Virginia provide the discretionary authority for the regulation. Section 3.1-530.1 of the Code of Virginia authorizes the Board of Agriculture and Consumer Services (board) "...to establish definitions, standards of quality and identity, and to adopt and enforce regulations dealing with the issuance of permits, production, importation, processing, grading, labeling, and sanitary standards for milk, milk products, and those products manufactured or sold in semblance to or as substitutes therefor." Section 3.1-530.2 directs the board to be guided by those regulations recommended from time to time by the United States Department of Health, Education and Welfare, and the United States Department of Agriculture when adopting regulations for the purpose of sanitation and to prevent deception. Section 3.1-535 authorizes the board to make and enforce rules governing applications for certificates to manipulate the Babcock or other centrifugal machine for the purpose of determining the composition of milk or cream for purposes of inspection, to determine the composition or value of milk or cream, or to sample or weigh milk or cream as a basis for payment in buying or selling. Section 3.1-535.1 authorizes the board "...to promulgate and enforce rules and regulations governing the equipment, standards, and procedures used in the receiving, weighing, measuring, sampling, and testing of milk or other fluid dairy products when the results are to be used for the purpose of inspection, check testing, or as a basis for payment in buying or selling."

Purpose: The goals of the regulation are to (i) protect the public's health and welfare with the least possible costs and intrusiveness to the citizens of the Commonwealth; (ii) ensure the safety and quality of milk produced in Virginia by establishing temperatures at which milk must be kept on the farm and in the dairy plant, and by establishing equipment-design, construction, installation, and use requirements that protect milk from contamination during storage, transfer, and delivery; and (iii) establish standards to be used in measuring, collecting, and evaluating milk samples for purposes of determining its components (such as fats, solids, and protein that are the basis for determining how much the farmer is to be paid for his milk) and its suitability (determined by the amount of bacteria it contains, among other things) for consumption by humans.

The regulation includes the milk of goats, sheep, water buffalo, and other mammals if the milk or dairy products are sold or offered for sale for human consumption. The primary purpose of the regulation is to ensure the safety and quality of all milk and milk products produced.

All milk and milk products have the same potential to carry pathogenic organisms. Numerous diseases of humans have been documented to be present in the milk of lactating mammals. Brucellosis and tuberculosis are two well-known and documented diseases that are capable of being spread from cows and goats to humans through their milk. Other common pathogens associated with milk and dairy products are: *Staphylococcus*, noted for its toxin production; *Streptococcus*, which causes strep-throat; *Campylobacter jejuni*, which infects the lining of the intestine and causes bloody diarrhea; *Escherichia coli*, which is responsible for causing bloody diarrhea and Hemolytic Uremic Syndrome; *Salmonella*, which also causes diarrhea; *Yersinia enterocolitica*, which causes severe abdominal pain; *Listeria monocytogenes*, which causes fever, vomiting, and can lead to still-births in pregnant women; and *Coxiella burnetii*, which causes Q fever. Some of these diseases can be fatal.

Milk is an excellent growth medium for most organisms including many pathogens. The fact that spoilage organisms and pathogens can grow in milk if they are present or introduced later by poor handling practices makes milk and milk products potentially hazardous if they are not properly processed, handled, packaged, and stored. The regulation ensures the safety and quality of milk by (i) requiring all milk to be cooled and stored at temperatures that prevent or slow the growth of pathogens and spoilage organisms; (ii) requiring milk to be cooled to storage temperatures quickly and maintained thereat to reduce the time pathogens and spoilage organisms have to grow while the temperature of the milk is being reduced to storage temperature; and (iii) requiring minimum equipment-design, construction, installation, and use requirements that protect milk from contamination during storage, transfer, and delivery.

The regulation establishes standards to be used in measuring, collecting, and evaluating milk samples for purposes of determining its components (such as fats, solids, and protein that are the basis for determining how much the farmer is to be paid for his milk) and its suitability (determined by the amount of bacteria it contains, among other things) for consumption by humans. Milk samples used for inspection and pay purposes must be truly representative of the entire shipment of milk marketed to protect the buyer and the seller. The regulation establishes (i) the procedures that must be followed to accurately measure the amount of milk being shipped; (ii) the types of equipment that may be used to collect and store official milk samples; and (iii) the minimum information that must be recorded on the seller's weigh ticket and the sample container.

The regulation also establishes chain of custody requirements for official milk samples by (i) requiring persons to obtain a permit to weigh and sample milk prior to weighing or sampling any milk; (ii) establishing sample collection, storage, and transportation procedures; (iii) establishing equipment and records requirements; and (iv) provisions for sample security. Establishing chain of custody for milk samples is essential to enforce the safety and quality requirements on permit holders. The inability of the agency to establish chain of custody on any individual milk sample renders the results of laboratory tests on the sample unenforceable.

Rationale for Using Fast-Track Process: Each of the changes to the regulation were considered and recommended by the Attorney General's Government and Regulatory Reform Task Force, an initiative of Attorney General Robert F. McDonnell, and have been reviewed and approved by the administration of Governor Timothy Kaine. All of the changes are needed to make the regulation more understandable and user friendly. None of the changes add any new requirements or modify any existing requirements. The regulation is essentially the same as before, except now it is more easily understood by the reader. During the public comment period there were no comments received that would conflict with any of the recommendations of the Government and Regulatory Reform Task Force and agency staff do not anticipate any controversy with any of the amendments.

Substance: There are no substantive changes to the regulation.

Issues: The primary advantage to the public and businesses of implementing the amended provisions is making the regulation easier to understand and user friendly. The primary advantage to the agency and Commonwealth is to foster voluntary compliance with the requirements because they are easier to understand and user friendly. There are no disadvantages to implementing the amended regulation.

The Department of Planning and Budget's Economic Impact Analysis:

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Summary of the Proposed Amendments to Regulation. The Board of Agriculture and Consumer Services (Board) proposes to update citations and make small wording changes for consistency.

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

Estimated Economic Impact. The proposed update of citations will not change any requirements. The changes will make it easier for the public to find relevant Code of Virginia sections and other documents. Since there are no costs associated with these amendments, the change in language will produce a net benefit.

The proposed amendments in language for consistency will also not change any requirements. To the extent that the current language produces any confusion, the proposed language change will produce a small benefit by reducing such confusion.

Businesses and Entities Affected. The Department of Agriculture and Consumer Services estimates that there are 750 dairy farms, 22 contract milk haulers, and 25 dairy processors in the Commonwealth, all of whom qualify as small businesses.

Localities Particularly Affected. The proposed additional language does not particularly affect specific localities.

Projected Impact on Employment. The proposed additional language will not affect employment.

Effects on the Use and Value of Private Property. The proposed additional language will not significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed additional language will not significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed additional language will not significantly affect small businesses.

Real Estate Development Costs. The proposed additional language will not significantly affect real estate development costs.

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 agency concurs with the analysis of the Department of Planning and Budget.

Summary:

The amendments use the same terms and words consistently throughout the regulation. Numerous citations to requirements have been updated to properly identify reference documents and citations to specific sections of the Code of Virginia to make the regulation more easily understood. The changes made are not substantive changes to the requirements of the regulation and do not create any new requirements or modify any existing requirements.

2VAC5-501-80. Farm bulk milk pickup tanker and milk transport tank requirements.

A. Each contract hauler or subcontract hauler shall:

1. Use only a farm bulk milk pickup tanker or a milk transport tank that complies with all the requirements contained in 3-A Sanitary Standards for Stainless Steel Automotive ~~Milk and Milk Product~~ Transportation Tanks for Bulk Delivery ~~and/or~~ and Farm Pick-Up Service, ~~Document No. 05-14 (Nov. 1989) Number 05-15 (effective November 24, 2002),~~ (3-A Sanitary Standards, Incorporated) and that are maintained in good repair;
2. Ensure that all appurtenances of each farm bulk milk pickup tanker or each milk transport tank including any hoses, pumps, and fittings comply with all applicable 3-A Sanitary Standards (effective as of November 20, 2001), (3-A Sanitary Standards, Incorporated) for construction and are maintained in good repair;
3. Provide sample racks for holding all milk samples collected in the sample cooler;
4. Provide a sample dipper or other sampling device of sanitary design that is maintained clean and in good repair;

5. Provide milk sample storage coolers that have sufficient insulation to maintain proper milk temperatures under all conditions throughout the year;

6. Provide only sterile sample bags, tubes or bottles, properly stored to prevent contamination;

7. Provide a calibrated pocket thermometer certified as accurate within plus or minus 2.0°F to each bulk milk hauler in his employ and ensure the pocket thermometer is recertified a minimum of each six months thereafter;

8. Provide a United States Environmental Protection Agency approved and registered sanitizer for the sample dipper container;

9. Provide a suitable sanitizer test kit to each bulk milk hauler in his employ for use in checking the strength of sanitizing solutions;

10. Ensure that each appurtenance requiring flexibility for the milk transfer system to operate properly is free draining, supported to maintain a uniform slope and alignment, and easily disassembled and accessible for inspection without the use of tools;

11. Ensure that each farm bulk milk pickup tanker or a milk transport tank and their appurtenances are cleaned and sanitized prior to being used the first time, after each use thereafter, and each time 72 hours has elapsed since the last cleaning and sanitizing treatment;

12. Ensure that multiple milk pickups from dairy farms occur during a 24-hour period without washing and sanitizing the farm bulk milk pickup tanker only if a maximum of two hours elapses between the time of the last delivery and start of the next milk pickup;

13. Pickup any milk in a farm bulk milk pickup tanker or milk transport tank only if there exists a wash and sanitize record for the farm bulk milk pickup tanker or milk transport tank documenting that the tank has been washed and sanitized within the past 72 hours;

14. Install and use clamps on each milk pickup hose that are easily dismantled by hand without the use of tools;

15. Identify and maintain each farm bulk milk pickup tanker or milk transport tank with the identification numbers and letters assigned to each farm bulk milk pickup tanker or milk transport tank by the state regulatory agency. The identification shall be affixed to the left rear bulkhead of the tanker;

16. Provide a suitable enclosure in the rear milk hose or sample compartment of each farm bulk milk pickup tanker for storing inspection sheets capable of protecting the inspection sheets from excessive moisture, dust, soil, or light that might damage or render the inspection sheets illegible and so they will be available to any state or

federal regulatory agent wherever the farm bulk milk pickup tanker might deliver;

17. Provide a suitable enclosure located within three feet of the tank outlet valve or located on top of one of the rear wheel fenders for each milk transport tank for storing inspection sheets capable of protecting the inspection sheets from excessive moisture, dust, soil, or light that might damage or render the inspection sheets illegible and so they will be available to any state or federal regulatory agent wherever the milk transport tank might deliver;

18. Completely empty the farm bulk cooling or holding tank each time that milk is picked up;

19. Store the three most recent inspection reports for each farm bulk milk pickup tanker or transport tank in the protected enclosure provided on each farm bulk milk pickup tanker or transport tank at all times; and

20. Provide a means to lock or seal each opening into a bulk milk pickup tanker or milk transport tank for security purposes.

B. When picking up and transporting any milk in a bulk milk pickup tanker each bulk milk hauler shall:

1. Practice good hygiene, maintain a neat and clean appearance, and abstain from using tobacco products in any milkhouse;

2. Conduct all pickup and handling practices to prevent contamination of any milk contact surface;

3. Pass the milk transfer hose through the hose port and remove the cap from the transfer milk hose and set it where it will not become contaminated and then attach the transfer milk hose to the tank outlet valve;

4. Wash his hands thoroughly and dry his hands with a clean single-service towel or electric forced air hand dryer immediately prior to measuring or sampling the milk in the tank;

5. Examine the milk in the tank by sight and smell for any off odor or any other abnormalities that would render the milk unacceptable and reject the milk if necessary;

6. Record the milk producer's name, milk producer's identification number, the date and time of pickup, the temperature of the milk, the measuring rod reading, the poundage, the name of the purchasing organization, and the signature of the bulk milk hauler on the producer's weight ticket;

7. Check the temperature of the milk in each farm bulk cooling or holding tank at least once a month with an accurately calibrated pocket thermometer after it has been properly sanitized;

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8. Turn off the milk tank agitator if it is running when they arrive at the milkhouse or milkroom and allow the surface of the milk to become quiescent;
 9. Carefully insert the measuring rod, after it has been wiped dry with a single-service towel, into the tank and then read the measurement. Each bulk milk hauler shall repeat this procedure until two identical measurements are obtained and then shall record the measurement on the weight ticket;
 10. Agitate the milk in each tank holding two thousand gallons or less milk a minimum of five minutes before collecting any milk sample;
 11. Agitate the milk in each tank holding more than two thousand gallons of milk a minimum of ten minutes before collecting any milk sample;
 12. While the tank is being agitated, bring the sample container, dipper, dipper container, and sanitizing agent, or single service sampling tubes into the milkhouse aseptically;
 13. While the tank is being agitated, remove the cap from the tank outlet valve and examine for milk deposits or foreign matter and then sanitize if necessary;
 14. Remove the sample dipper or sampling device from the sanitizing solution and rinse it in the milk from the tank at least twice before collecting any official milk sample;
 15. Collect two representative samples from each tank after the milk has been properly agitated, transferring the milk from the sample dipper to the sample container away from the tank opening to avoid spilling any milk back into the tank, and filling the sample containers only three quarters full;
 16. Rinse the sample dipper with water until it is free of visible milk and replace it in its carrying container;
 17. Close the cover or lid of the bulk tank;
 18. Identify each milk sample with the producer's patron or member number and the date of collection;
 19. Collect at the first pickup for each load of milk two temperature samples and identify the temperature samples with the date, time, temperature of the milk, producer number, and name of the bulk milk hauler;
 20. Place each milk sample collected immediately on ice in the sample storage cooler;
 21. After collection of milk samples, open the outlet valve and start the pump to transfer the milk from the farm tank to the bulk milk pickup tanker;
 22. Turn off the agitator once the level of milk in the tank has reached the level where over-agitation will occur;
 23. Disconnect and cap the transfer hose after removing it from the outlet valve of the tank;
 24. Observe the walls and bottom of the tank for foreign matter and extraneous material and record any objectionable observations on the weight ticket;
 25. Rinse the entire inside of the tank with warm water while the tank outlet valve is open;
 26. Use only sample containers and single-service sampling tubes that comply with all the requirements contained in Standard Methods for the Examination of Dairy Products, 16th Edition, 1992;
 27. Cool and store all official milk samples to a temperature of 40°F or cooler, but not frozen;
 28. Provide sufficient ice and water or other coolant in the sample storage cooler to maintain all milk samples at proper temperature;
 29. Discard any milk that remains in the external transfer system that exceeds 45°F including any milk in pumps, hoses, and air elimination equipment or metering systems;
 30. Protect samples from contamination and shall not bury the tops of sample containers in ice or bury sample containers above the milk level in the sample containers;
 31. Keep all producer milk samples that represent the commingled milk on the load with the load of milk until the load of milk has been received by a milk plant, receiving station, or transfer station or if rejected by a milk plant, receiving station, or transfer station until the milk samples are collected for official laboratory testing to determine the disposition of the load of milk; and
 32. Deliver each bulk milk pickup tanker of commingled milk to a milk plant, receiving station, or transfer station within 24 hours after the last milk pickup on the route for the bulk milk pickup tanker.
- C. When sampling any milk from a bulk milk pickup tanker or transport tanker the dairy plant sampler shall:
1. Practice good hygiene, maintain a neat and clean appearance, and abstain from using tobacco products in the receiving area;
 2. Conduct all sampling and handling practices to prevent contamination of any milk contact surface;
 3. Wash his hands thoroughly and dry his hands with a clean single-service towel or acceptable air dryer immediately prior to sampling the milk in the tank;
 4. Examine the milk in the tank by sight and smell for any off odor or any other abnormalities that would classify the milk as unacceptable and reject the milk if necessary;
 5. Agitate for a period of time needed to blend the milk in each compartment to a homogenous state using odor-free,

pressurized, filtered air or electrically driven stirring or recirculating equipment that has been properly sanitized before sampling or receiving;

6. Check the temperature of the milk in each compartment with a properly sanitized thermometer that has been checked against a standardized thermometer at least once every six months and certified accurate;

7. Reject any milk that has a temperature above 45°F;

8. Bring the sample container, properly constructed sample dipper, and sanitizing solution to the tanker aseptically after the milk is properly agitated;

9. Remove the sample dipper or sampling device from the sanitizing solution and rinse it in the milk from the tank at least twice before collecting any official milk sample;

10. Collect at least one representative sample from each compartment of the tanker, transferring the milk from the sample dipper to the sample container away from the tank opening to avoid spilling any milk back into the tank, and filling the sample container only three quarters full;

11. Rinse the sample dipper with water until it is free of visible milk and replace it in its carrying container or storage container;

12. Close the cover or lid for each compartment of the bulk milk tanker;

13. Identify each milk sample with the tanker number, compartment if the tanker is equipped with more than one compartment, and the date of collection;

14. Place each milk sample collected immediately on ice in a sample storage cooler or deliver it to the laboratory for immediate analysis;

15. Attach the milk transfer hose to the outlet valve of the milk tank truck and open the outlet valve of the milk tank truck before starting the pump to transfer the milk from the bulk milk pickup tanker to the milk plant storage facility or silo only after the collection of official milk samples;

16. Turn off the agitator once the level of milk in the tank has reached the level where over-agitation will occur;

17. Disconnect and cap the transfer hose after removing it from the outlet valve of the tank;

18. Observe the walls and bottom of the tank for foreign matter and extraneous material and record any objectionable observations on the plant receiving log;

19. Rinse the entire inside of the tanker with warm water after the tanker has been emptied and the external transfer system has been disconnected while the tanker outlet valve is open;

20. Use only sample containers and single-service sampling tubes that comply with all the requirements contained in Standard Methods for the Examination of Dairy Products, 16th Edition, 1992;

21. Cool and store all official milk samples to a temperature of 40°F or cooler, but not frozen;

22. Provide sufficient ice and water or other coolant in the sample storage cooler to maintain all milk samples at proper temperature;

23. Protect samples from contamination and not bury tops of sample containers in ice or bury samples above the milk level in the sample containers;

24. Promptly deliver samples and sample data to the laboratory; and

25. Discard any milk that remains in the external transfer system that exceeds 45°F including any milk in pumps, hoses, air elimination equipment, or metering systems.

D. Wash and sanitize records. Each bulk milk hauler shall:

1. Ensure each bulk milk pickup tanker or milk transport tank is properly cleaned and sanitized after unloading;

2. Ensure a cleaning and sanitizing tag is affixed to the outlet valve of the bulk milk pickup tanker or milk transport tank after it is washed;

3. Ensure when the bulk milk pickup tanker or milk transport tank is next washed, the previous cleaning and sanitizing tag is removed and stored at the location where the bulk milk pickup tanker or milk transport tank was washed; and

4. Ensure the following information is recorded on the wash and sanitize tag before it is attached to the outlet valve of the bulk milk pickup tanker or milk transport tank:

a. Identification number of the bulk milk pickup tanker or milk transport tank;

b. Date and time of day the bulk milk pickup tanker or milk transport tank was cleaned and sanitized;

c. Location where the bulk milk pickup tanker or milk transport tank was cleaned and sanitized; and

d. The signature of the person who cleaned and sanitized the bulk milk pickup tanker or milk transport tank.

E. Wash and sanitize records. Each person who operates a milk plant, receiving station, or transfer station and each dairy plant sampler responsible for sampling and receiving milk into a milk plant, receiving station, or transfer station shall:

1. Ensure each bulk milk pickup tanker and milk transport tank is properly cleaned and sanitized after unloading;

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2. Ensure a cleaning and sanitizing tag is affixed to the outlet valve of the bulk milk pickup tanker or milk transport tank after it is washed;

3. Ensure when washing a bulk milk pickup tanker or milk transport tank, the previous cleaning and sanitizing tag is removed and stored at the location where the bulk milk pickup tanker or milk transport tank is washed; and

4. Record the following information on the wash and sanitize tag before it is attached to the outlet valve of the bulk milk pickup tanker or milk transport tank:

- a. Identification number of the bulk milk pickup tanker or milk transport tank;
- b. Date and time of day the bulk milk pickup tanker or milk transport tank was cleaned and sanitized;
- c. Location where the bulk milk pickup tanker or milk transport tank was cleaned and sanitized; and
- d. The signature of the person who cleaned and sanitized the bulk milk pickup tanker or milk transport tank.

F. Labeling and shipping documents. Each bulk milk hauler shall ensure that each shipping document or load manifest contains the following information for each bulk milk pickup tanker or milk transport tank:

1. The shipper's name, address, and permit number;
2. The Interstate Milk Shipper Bulk Tank Unit identification number for each Bulk Tank Unit on the load of milk or the Interstate Milk Shipper listed Plant Number;
3. The milk hauler permit number if the milk hauler is not an employee of the shipper;
4. The point of origin of the shipment;
5. The bulk milk pickup tanker or milk transport tank identification number;
6. The name of the product;
7. The weight of the product;
8. The temperature of the product when loaded;
9. The date of shipment;
10. The name of the supervising regulatory agency at the point of origin of shipment;
11. A statement as to whether the contents of the load are raw, pasteurized, or in the case of cream, lowfat, or skim milk whether it has been heat-treated;
12. The seal number on inlet, outlet, wash connections and vents, if applicable; and
13. The grade of the product.

G. Protection of bulk milk and chain of custody of milk samples.

1. Each contract hauler, subcontract hauler, bulk milk hauler, and operator of a bulk milk pickup tanker or milk transport tank shall ensure the proper protection of all milk and milk samples in his custody. Each contract hauler, subcontract hauler, bulk milk hauler, and operator of a bulk milk pickup tanker or milk transport tank shall seal or lock each opening into a bulk milk pickup tanker or milk transport tank including each manhole lid, vent, wash port, and door to the pump housing and sample storage box prior to leaving the bulk milk pickup tanker or milk transport tank unattended.

2. Each contract hauler, subcontract hauler, bulk milk hauler, and operator of a bulk milk pickup tanker or milk transport tank shall inspect the condition of the seals and locks placed on each opening into the bulk milk pickup tanker or milk transport tank upon his return after an absence to determine if the seals or locks have been tampered with.

3. Each contract hauler, subcontract hauler, bulk milk hauler, and operator of a bulk milk pickup tanker or milk transport tank shall report immediately to the state regulatory authority instances of tampering with the seals or locks.

4. Each contract hauler, subcontract hauler, bulk milk hauler, and operator of a bulk milk pickup tanker or milk transport tank shall hold a valid permit issued by the state regulatory authority for the collection of milk samples prior to collecting or transporting any milk or milk samples.

H. Notwithstanding the provisions of subdivisions A 4 and A 8 of this section for each contract hauler or subcontract hauler to provide a sample dipper and approved sanitizer for the sample dipper container, the sample dipper, sample dipper container and approved sanitizer may be provided and stored in the milkroom accessible to the contract hauler or subcontract hauler by the person operating the dairy farm where the contract hauler or subcontract hauler is picking up the milk.

2VAC5-501-100. Interpretation and enforcement.

A. The administrative procedures used to conduct case decisions under this chapter shall conform to the provisions of the Virginia Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

B. The Virginia Department of Agriculture and Consumer Services shall comply with the following administrative procedures when summarily suspending a permit as specified in 2VAC5-501-30 G:

1. The Virginia Department of Agriculture and Consumer Services shall serve upon the permit holder a written notice of suspension. The written notice of suspension shall specify the violations in question and inform the permit

holder of the right to appear before the Virginia Department of Agriculture and Consumer Services in person, by counsel, or by other qualified representative at a an informal fact-finding conference pursuant to §2.2-4019 of the Code of Virginia for the informal presentation of factual data, arguments, and proof to appeal this determination of violation;

2. Upon receipt of written application from any person whose permit has been summarily suspended (within 30 days after the effective date of the summary suspension), the Virginia Department of Agriculture and Consumer Services shall within seven days after the date of receipt of a written application from any person whose permit has been summarily suspended, proceed to hold an informal fact-finding conference pursuant to §2.2-4019 of the Code of Virginia to ascertain the facts of the violations in question, and upon evidence presented at the informal fact-finding conference, shall affirm, modify, or rescind the summary suspension;

3. The Virginia Department of Agriculture and Consumer Services shall, unless the parties consent, ascertain the fact basis for their decisions of cases through informal conference proceedings pursuant to §2.2-4019 of the Code of Virginia. Such conference proceedings include the rights of parties to the case to have reasonable notice thereof, to appear in person or by counsel or other qualified representative before the Virginia Department of Agriculture and Consumer Services for the informal presentation of factual data, argument, or proof in connection with any case, to have notice of any contrary fact basis or information in the possession of the Department which can be relied upon in making an adverse decision, to receive a prompt decision of any application for license, benefit, or renewal thereof, and to be informed, briefly and generally in writing, of the factual or procedural basis for an adverse decision in any case;

4. No person whose permit has been summarily suspended may be granted an informal fact-finding conference by the Virginia Department of Agriculture and Consumer Services unless the Virginia Department of Agriculture and Consumer Services receives the person's written application within 30 days after the effective date of the summary suspension;

5. From any adverse decision of an informal fact-finding conference, the permit holder may request a formal hearing under ~~§2.2-4000 et seq.~~ §2.2-4020 of the Code of Virginia by writing the Program Manager of the Office of Dairy and Foods within 30 days stating the request and providing the Virginia Department of Agriculture and Consumer Services with a statement of the issues in dispute. If the request for a formal ~~conference~~ hearing pursuant to §2.2-4020 of the Code of Virginia is denied, the Virginia Department of Agriculture and Consumer Services shall

notify the permit holder in writing and further may affirm or modify the decision of the informal fact-finding conference; and

6. If a formal ~~fact-finding conference~~ hearing pursuant to §2.2-4020 of the Code of Virginia is denied, the Virginia Department of Agriculture and Consumer Services shall notify the permit holder of the right to file an appeal in the circuit court.

DOCUMENTS INCORPORATED BY REFERENCE

3-A Sanitary Standards for Stainless Steel Automotive Transportation Tanks for Bulk Delivery and Farm Pick-Up Service, Number 05-15, eff. November 24, 2002, 3-A Sanitary Standards, Inc.

3-A Sanitary Standards, effective as of November 20, 2001, International Association of Food Protection 3-A Sanitary Standards, Incorporated.

UL Rated NEMA 4x Enclosure Definition as published in ANSI/NEMA 250, Enclosures for Electrical Equipment (1000 Volts Maximum), ANSI Approval Date August 30, 2001, American Society of Mechanical Engineers.

Standard Methods for the Examination of Dairy Products, 16th Edition, 1992, American Public Health Association.

American Iron & Steel Institute (AISI) 300 Series as published in Steel Products Manual - Stainless Steels, March 1999, Iron and Steel Society.

VA.R. Doc. No. R08-1066; Filed April 7, 2008, 10:09 a.m.

Fast-Track Regulation

Title of Regulation: **2VAC5-510. Rules and Regulations Governing the Production, Processing, and Sale of Ice Cream, Frozen Desserts, and Similar Products (amending 2VAC5-510-10, 2VAC5-510-50, 2VAC5-510-90, 2VAC5-510-110, 2VAC5-510-130, 2VAC5-510-150, 2VAC5-510-170, 2VAC5-510-190, 2VAC5-510-210, 2VAC5-510-240, 2VAC5-510-260, 2VAC5-510-290, 2VAC5-510-310, 2VAC5-510-330, 2VAC5-510-350, 2VAC5-510-390, 2VAC5-510-410, 2VAC5-510-420, 2VAC5-510-500, 2VAC5-510-510; repealing 2VAC5-510-60, 2VAC5-510-70, 2VAC5-510-80, 2VAC5-510-100, 2VAC5-510-120, 2VAC5-510-140, 2VAC5-510-160, 2VAC5-510-180, 2VAC5-510-200, 2VAC5-510-220, 2VAC5-510-230, 2VAC5-510-250, 2VAC5-510-270, 2VAC5-510-300, 2VAC5-510-320, 2VAC5-510-340, 2VAC5-510-360, 2VAC5-510-400).**

Statutory Authority: §§3.1-562.1 and 3.1-562.2 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

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Public Comments: Public comments may be submitted until May 28, 2008.

Effective Date: June 12, 2008.

Agency Contact: John A. Beers, Program Supervisor, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1452, FAX (804) 371-7792, (800) 828-1120/TTY, or email john.beers@vdacs.virginia.gov.

Basis: Sections 3.1-562.1 and 3.1-562.2 of the Code of Virginia provide the statutory authority for the regulations. These sections do not require the Board of Agriculture and Consumer Services to adopt regulations governing the production, processing and sale of ice cream, frozen desserts and similar products.

Purpose: The specific and measurable goals of this regulation:

1. Protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth;
2. Ensure the safety of ice cream or frozen desserts through pasteurization and prevention of contamination; and
3. Facilitate sales of Virginia ice cream and frozen desserts in intrastate and interstate commerce.

The first specific goal of the regulation is to reduce the risk of death and illness from consuming contaminated ice cream or frozen desserts. From a practical point of view, it is infeasible to determine the exact number of incidents of contamination that have been prevented by the system established through the regulation. Determining the exact number of incidents prevented is not necessary, however, since the regulation requires pasteurization and certain other practices to prevent contamination of these products after they have been pasteurized.

Pasteurization is a heat treatment process that destroys all known disease pathogens and is widely recognized (e.g., by the American Medical Association, the Food and Drug Administration, the United States Department of Agriculture, and state public health departments) as an effective means of destroying pathogens in food products, including ice cream and frozen desserts. Pasteurization is the first principal means by which the regulation seeks to reduce the risk of death and illness. The Department of Agriculture and Consumer Services inspects the pasteurization equipment in each ice cream and other frozen dessert manufacturing facility. The department also regularly collects samples of ice cream and other frozen dessert precuts from each manufacturer and tests these samples to make sure that proper pasteurization occurred.

The second principal means by which the regulation seeks to reduce the risk of death and illness is by requiring

manufacturers to employ certain practices that prevent contamination after pasteurization has occurred. An example is the requirement that all equipment that comes in contact with any ice cream or other frozen dessert be cleaned and sanitized daily. The department tests each sample for the presence of unacceptable bacteria.

The second specific goal of the regulation is to facilitate sales of Virginia ice cream and frozen desserts, both in-state and within interstate commerce. Measuring success in attaining this specific goal is difficult because it involves measuring intangibles, such as public perception, as factors in buying decisions. Using certain advertising and marketing techniques, such as focus groups and telephone surveys, may give indications of the importance of the intangibles, but the public sector is currently not structured to employ these techniques. Thus, it is probably infeasible to identify a measure that would accurately reflect the role of the regulations in facilitating sales. We would conclude that the second goal is specific, but progress in attaining it is not easily measured.

This regulation establishes the basic mechanisms to protect public health in each step of the process -- from the initial manufacturing of ice cream and other frozen dessert products to the moment in which the products reach the consumer. The regulation requires that all ice cream and other frozen desserts be manufactured from pasteurized mix. Pasteurization is a heat treatment process that destroys all known disease-producing microorganisms and is widely recognized (e.g., by the American Medical Association, the Food and Drug Administration, the United States Department of Agriculture, and state public health departments) as an effective means of destroying pathogens in food products, including ice cream and other frozen desserts. This step significantly reduces the risk to humans of contracting disease transmitted through consuming contaminated ice cream or frozen desserts. In addition, the regulation sets certain minimum quality standards and inspections that must be met to hold a permit to manufacture ice cream and other frozen desserts. Inspection, sampling, and testing help ensure Virginia citizens safe and properly labeled ice cream and other frozen desserts.

In early October 1994, a nationwide recall of ice cream, sherbet, and frozen yogurt products was instituted by a leading manufacturer because many of these products were contaminated with the bacteria salmonella, which can cause illness and death. By the end of October, as a result of consuming the contaminated frozen dessert products, 61 people across the country had been hospitalized. In 38 states (including Virginia), another 547 cases of food poisoning from consumption of the contaminated products had been confirmed through scientific tests, and another 3,264 cases had been reported in which food poisoning was suspected. The Centers for Disease Control estimates that 500,000 people nationwide were affected as a result of this incident. Without mechanisms to ensure the quality of ice cream and

other frozen desserts, incidents similar to this would likely be far more common.

Sales of milk and other dairy products, such as ice cream, are extremely sensitive to reports that reach consumers of contamination or poor quality in those products. Even after the reported problems have been corrected, consumers do not readily return to purchasing these products. Negative perceptions among consumers may be changed over a period of time, but at the cost of lost sales. Maintaining positive consumer attitudes is extremely important to the continued competitiveness and profitability of the ice cream and other frozen desserts industry in Virginia. This regulation provides support for the continued positive perception of ice cream and other frozen desserts as safe, wholesome products. In addition, the standards of identity help assure that ice cream and other frozen desserts sold by any manufacturer meet consumer expectations.

Rationale for Using Fast-Track Process: Each of the changes to the regulation were considered and recommended by the Attorney General's Government and Regulatory Reform Task Force, an initiative of Attorney General Robert F. McDonnell, and have been reviewed and approved by the administration of Governor Timothy Kaine. All of the changes are needed to reduce the sheer size of the regulation and to make them more understandable and user friendly. None of the changes add any new requirements or modify any existing requirements. The regulation is essentially the same as before, except now it is more easily understood by the reader. During the recent periodic review of the regulation, there were no comments received that would conflict with any of the recommendations of the Attorney General's Government and Regulatory Reform Task Force, and agency staff does not anticipate any controversy with any of the amendments.

Substance: There were no changes of substance to the regulation.

Issues: The primary advantage to the public and businesses of implementing the amended provisions is making the regulation easier to understand and user friendly. The primary advantage to the agency and Commonwealth is to foster voluntary compliance with the requirements because they are easier to understand and user friendly. There are no disadvantages to implementing the amended regulation.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Agriculture and Consumer Services (Board) has proposed amendments to the regulation that consist of consolidating 31 separate sections into 15 sections, correcting some typographical errors and incorrect citations, and repealing two sections because they have been preempted by federal regulation and law.

Result of Analysis. There are neither benefits nor costs to the proposed changes.

Estimated Economic Impact. The proposed regulation consolidates 31 sections of the current regulation into 15 sections. For example, 2VAC5-510-50 is currently titled "Frozen custard, french ice cream, french custard ice cream; identity; label statement of optional ingredients" and 2VAC5-510-60 is titled "Frozen custard mix, french ice cream mix, and french custard ice cream mix." Under the proposed amendment, 2VAC5-510-50 will be titled "Frozen custard, french ice cream, french custard ice cream; identity; label statement of optional ingredients; frozen custard mix, french ice cream mix, and french custard ice cream mix," 2VAC5-510-60 will be repealed, and the text from 2VAC5-510-60 will be pasted into 2VAC5-510-50. These proposed amendments do not change anything substantive about the regulation and therefore impose neither costs nor benefits.

The proposed regulation repeals the sections that include the identity statements for ice milk and ice milk mix because the section is unenforceable. These sections were preempted by changes to the federal standards of identity for ice cream and the National Labeling and Education Act that remove the standard of identity for ice milk so that a reduced fat ice cream product that complies with the existing standard of identity for ice milk no longer needs to be labeled "ice milk" and may be labeled as "reduced fat ice cream." This change appeared in the Federal Register of September 14, 1994 (59 FR 47072) with an effective date for compliance of September 14, 1995.¹ This amendment, therefore, repeals a section of the Virginia Administrative Code that has not been practically relevant for almost 13 years; repealing it should have no effect on Virginians.

The remaining regulatory amendments simply correct typographical errors, correct citations, or update regulatory language to include the current names for documents or organizations referenced in the regulation. For example, the proposed amendment changes the name "International Association of Milk, Food, and Environmental Sanitarians" to its current name of "International Association of Food Protection." These changes create neither costs nor benefits for entities in the Commonwealth.

Businesses and Entities Affected. The regulation affects any person or business who manufactures, packages, and sells ice cream and frozen desserts at wholesale. The Virginia Department of Agriculture and Consumer Services estimates that there are 17 small businesses affected by the regulation.

Localities Particularly Affected. The proposed amendments do not disproportionately affect specific localities in the Commonwealth.

Projected Impact on Employment. The proposed amendments are not anticipated to have any impact on employment.

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Effects on the Use and Value of Private Property. The proposed amendments are not anticipated to have any effect on the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments do not add cost or otherwise affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments do 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.

¹ Link: <http://frwebgate2.access.gpo.gov/cgi-bin/waisgate.cgi?WAIISdocID=095922166541+4+0+0&WAIISaction=retrieve>

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

Summary:

The amendments consolidate 31 separate sections into 15 sections and repeal several sections to reduce the sheer size of the regulation and make it more user friendly. Some sections have been amended to use the same words and terms throughout and numerous citations to requirements have been updated to properly identify

reference documents and citations to specific sections of the Code of Virginia to make the regulation more easily understood. The changes made are not substantive changes to the requirements of the regulation and do not create any new requirements or modify any existing requirements. Two sections that were repealed (2VAC5-510-70 and 2VAC5-510-80) are currently unenforceable because they were preempted by changes to the federal standard of identity for ice cream and the National Labeling and Education Act.

Part I Definitions

2VAC5-510-10. Definitions.

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

"Adulterated milk, milk products, and frozen desserts" means any milk, milk products, other frozen dessert ingredient, frozen desserts or frozen desserts mix which:

1. Bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health;
2. Bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by state or federal regulation, or in excess of such tolerance if one has been established;
3. Consists, in whole or in part, of any substance unfit for human consumption;
4. Has been produced, processed, prepared, packed, or held under insanitary conditions;
5. Container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or
6. Any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

"Commissary or ~~Depot~~ depot" means any place, premise, or establishment in which pasteurized mix, ingredients, containers, or supplies are prepared or stored for the servicing of one or more mobile units, and where facilities are provided for cleaning the vehicle and the cleaning and bactericidal treatment of equipment and utensils.

"Frozen desserts manufacturer" means any person who manufactures, processes, converts, partially freezes, or freezes any mix or frozen desserts for distribution or sale.

"Frozen desserts plant" means any place or premises where frozen desserts or mix are manufactured, processed, or frozen for distribution or sale at wholesale.

"Frozen desserts retail establishment" means any place or premises including retail stores, stands, hotels, restaurants, and vehicles or mobile units where frozen desserts are frozen or partially frozen or dispensed for sale at retail.

"Misbranded" means milk, milk products, other frozen desserts ingredients, frozen desserts and frozen desserts mix are misbranded when:

1. Their containers bear or accompany any false or misleading written, printed, or graphic matter;
2. Such milk and products do not conform to their definitions as contained in this chapter; and
3. Such products are not labeled in accordance with Part VI (2VAC5-510-430 et seq.) of this chapter.

"Mobile unit" means any vehicle or temporary establishment that shall travel from place to place in which a frozen desserts processor freezes, partially freezes, or dispenses frozen desserts for sale.

"Official methods" means Official Methods of Analysis of the Association of Official Analytical Chemists, a publication of the Association of Official Analytical Chemists. A modified Roesse-Gottlieb test, such as the 'Mojonnier' or Dietert, may be used in making official determination of the butterfat and total solids content of frozen dairy food products.

"Pasteurization" or "pasteurized" means the process of heating, in approved and properly operated equipment, every particle of mix to any one of the following temperatures and holding at the temperature for the specified time:

1. 155°F and holding at such temperature for at least 30 minutes.
2. 175°F and holding at such temperature for at least 25 seconds.

Nothing contained in this definition shall be construed as barring any other method of process, or combination of times and temperatures, as may be demonstrated to be equally efficient.

"Permit" means authority issued under the Act by the regulatory agency.

"Person" means any individual, partnership, corporation, company, firm, trustee, or association.

"Plant" means any place, premise, or establishment where milk or dairy products are received or handled for processing or manufacturing the products defined herein.

"Powder" or ~~"Dry~~ "dry frozen desserts mix" means a frozen desserts mix in a dry form.

"Standard methods" means Standard Methods for the Examination of Dairy Products, a publication of the American Public Health Association.

"3-A Sanitary standards and accepted practices" means the standards for dairy equipment and accepted practices formulated by the 3-A Sanitary Standards Committees representing the International Association of Milk, Food, and Environmental Sanitarians for Food Protection, the United States Public Health Service, and the Dairy Industry Committee, Published by the ~~International Association of Milk, Food and Environmental Sanitarians~~ 3-A Sanitary Standards, Incorporated.

2VAC5-510-50. Frozen custard, french ice cream, french custard ice cream; identity; label statement of optional ingredients; frozen custard mix, french ice cream mix, and french custard ice cream mix.

A. Frozen custard, french ice cream, french custard ice cream conforms to the definition and standard of identity, and is subject to the requirements for label statement of optional ingredients, prescribed for ice cream by 2VAC5-510-30, except that one or more of the optional egg ingredients permitted by 2VAC5-510-30 F 1 are used in such quantity that the total weight of egg yolk solids therein is not less than 1.4% of the weight of the finished frozen custard; Provided, however, that when the ingredients named in ~~paragraphs~~ subdivisions 3 through 8 of 2VAC5-510-30 B, inclusive, are used the content of egg yolk solids may be reduced in proportion to the bulky ingredient or ingredients added, under the conditions prescribed by 2VAC5-510-30 A for reduction in milkfat and total milk solids; but in no case is the content of egg yolk solids less than 1.12%.

B. Frozen custard mix, french ice cream mix, and french custard ice cream mix are the pasteurized unfrozen combinations of ingredients that when frozen while stirring will produce products conforming to the definition of frozen custard, french ice cream, and french custard ice cream.

2VAC5-510-60. ~~Frozen custard mix, french ice cream mix, and french custard ice cream mix.~~ (Repealed.)

~~Frozen custard mix, french ice cream mix, and french custard ice cream mix are the pasteurized unfrozen combinations of ingredients which when frozen while stirring will produce products conforming to the definition of frozen custard, french ice cream, and french custard ice cream.~~

2VAC5-510-70. ~~Ice milk; identity; label statement of optional ingredients.~~ (Repealed.)

~~Ice milk is the food prepared from the same ingredients and in the same manner prescribed in 2VAC5 510 30 for ice cream and complies with all the provisions of 2VAC5 510 30, including the requirements for label statement of optional ingredients, except that:~~

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- ~~1. Its content of milkfat is not less than 2.0% but not more than 7.0%.~~
- ~~2. Its content of total milk solids is not less than 11%.~~
- ~~3. Caseinates may be added when the content of total milk solids is not less than 11%.~~
- ~~4. The provision for reduction in milkfat and total milk solids from the addition of bulky ingredients in 2VAC5-510-30 A does not apply.~~
- ~~5. The quantity of food solids per gallon is not less than 1.3 pounds, exclusive of the weight of the microcrystalline cellulose.~~
- ~~6. When any artificial coloring is used in ice milk, directly or as a component of any other ingredient, the label shall bear the statement "artificially colored," "artificial coloring added," "with added artificial color," or "_____, an artificial color added," the blank being filled in with the common or usual name of the artificial color; or in lieu thereof, in case the artificial color is a component of another ingredient, "_____ artificially colored."~~
- ~~7. The name of the food is "ice milk."~~
- ~~8. If both artificial color and artificial flavoring are used, the label statements may be combined.~~
- ~~9. Ice milk sold at the retail level may be drawn from a dispensing freezer and a sign must be plainly marked "Ice Milk," in a manner conspicuous to the public in letters at least three inches in height. Ice milk shall not be dispensed for sale from packages or containers unless used for milk shakes or shakes. "Dispensed" shall mean dipping or scooping from packages or containers.~~

2VAC5-510-80. Ice milk mix. (Repealed.)

~~Ice milk mix is the pasteurized unfrozen combination of ingredients which when frozen while stirring will produce a product conforming to the definition of ice milk.~~

2VAC5-510-90. Fruit sherbets; identity; label statement of optional ingredients; fruit sherbet mix.

A. Fruit sherbets are the foods each of which is prepared by freezing, while stirring, a mix composed of one or more of the optional characterizing fruit ingredients specified in subsection B of this section and one or more to the optional ingredients specified in subsection C of this section, sweetened with one or more of the optional sweetening ingredients specified in subsection D of this section. One or more of the optional ingredients specified in subsection E of this section may be used, subject to the conditions hereinafter set forth. The mix of combined dairy ingredients, with or without other ingredients, is pasteurized. The titratable acidity of the finished fruit sherbet, calculated as lactic acid, is not less than 0.35%. The mix with or without added water may be seasoned with salt, and may be homogenized. The optional

dairy ingredients used and the content of milkfat and nonfat milk solids therein are such that the weight of milkfat is not less than 1.0% and not more than 2.0%, and the weight of total milk solids is not less than 2.0% and not more than 5.0% of the weight of the finished fruit sherbet. The optional caseinates specified in subdivision 7 of subsection E of this section are not deemed to be milk solids. The finished fruit sherbet weighs not less than six pounds to the gallon; except that when the optional ingredient microcrystalline cellulose specified in subdivision 11 of subsection E of this section is used, the finished fruit sherbet weighs not less than six pounds to the gallon, exclusive of the weight of the microcrystalline cellulose.

B. The optional fruit characterizing ingredients referred to in subsection A of this section are any mature fruit or the juice of any mature fruit. The fruit or fruit juice used may be fresh, frozen canned, concentrated, or partially or wholly dried. The fruit may be thickened with pectin or other of the optional ingredients named in subdivision 2 of subsection E of this section, subject to the restriction on the total quantity of such substances in fruit sherbets prescribed in that subsection. The fruit is prepared by the removal of pits, seeds, skins, and cores, where such removal is usual in preparing that kind of fruit for consumption as fresh fruit. The fruit may be screened, crushed, or otherwise comminuted. It may be acidulated with citric acid, ascorbic acid, or phosphoric acid. In the case of concentrated fruit or fruit juices from which part of the water is removed, substances contributing flavor volatilized during water removal may be condensed and reincorporated in the concentrated fruit or fruit juice. In the case of citrus fruits, the whole fruit, including the peel but excluding the seeds, may be used, and in the case of citrus juice or concentrated citrus juices, cold-pressed citrus oil may be added thereto in an amount not exceeding that which would have been obtained if the whole fruit had been used. The quantity of fruit ingredients used is such that, in relation to the weight of the finished sherbet, the weight of fruit or fruit juice, as the case may be, including water necessary to reconstitute partially or wholly dried fruits or fruit juices to their original moisture content, is not less than 2.0% in the case of citrus sherbets, 6.0% in the case of berry sherbets, and 10% in the case of sherbets prepared with other fruits. For the purposes of this section, tomatoes and rhubarb are considered as kinds of fruit.

C. The optional dairy ingredients referred to in subsection A of this section are: cream, dried cream, plastic cream, (sometimes known as concentrated milkfat), butter, butter oil, milk, concentrated milk, evaporated milk, superheated condensed milk, sweetened condensed milk, dried milk, skim milk, concentrated skim milk, evaporated skim milk, condensed skim milk, superheated condensed skim milk, sweetened condensed skim milk, sweetened condensed part-skim milk, nonfat dry milk, sweet cream buttermilk, condensed sweet cream buttermilk, dried sweet cream

buttermilk, skim milk that has been concentrated and from which part of the lactose has been removed by crystallization, concentrated cheese whey, and dried cheese whey. Water may be added, or water may be evaporated from the mix. The sweet cream buttermilk and the concentrated sweet cream buttermilk or dried sweet cream buttermilk, when adjusted with water to a total solids content of 8.5% has a titratable acidity of not more than 0.17%, calculated as lactic acid. The term "milk" as used in this section means cow's milk. Dried cheese whey is uniformly light in color, free from brown and black scorched particles, and has an alkalinity of ash, not more than 225 milliliters 0.1 N HCl per 100 grams, a bacterial count of not more than 50,000 per gram, and, as adjusted with water to a total solids content of 6.5%, a titratable acidity of not more than 0.16% calculated as lactic acid. Concentrated cheese whey has an alkalinity of ash, not more than 115 milliliters 0.1 N HCl per 100 grams, a bacterial count of not more than 50,000 per gram, and, as adjusted with water to a total solids content of 6.5%, a titratable acidity of not more than 0.18%, calculated as lactic acid.

D. The optional sweetening ingredients referred to in subsection A of this section are: sugar (sucrose), dextrose, invert sugar (paste or sirup), glucose sirup, dried glucose sirup, corn sirup, dried corn sirup, malt sirup, malt extract, dried malt sirup, dried malt extract, maltose sirup, dried maltose sirup.

E. Other optional ingredients referred to in subsection A of this section are:

1. Liquid eggs, frozen eggs, dried eggs, egg yolks, frozen yolks; dried yolks; but the weight of the egg yolk solids therein is less than 0.5% of the weight of the finished fruit sherbet.
2. Agar-agar, algin (sodium alginate), calcium sulfate, egg white, gelatin, gum acacia, guar seed gum, gum karaya, locust bean gum, oat gum, gum tragacanth, hydroxypropyl methylcellulose, carrageenan, salts of carrageenan, furcelleran, salts of furcelleran, lecithin, pectin, psyllium seed husk, sodium carboxymethylcellulose. The total weight of the solids of any such ingredient used singly or of any combination of two or more such ingredients used (including any such ingredient added separately to the fruit ingredient) is not more than 0.5% of the weight of the finished fruit sherbet. Such ingredients may be added in admixture with dextrin, propylene glycol, or glycerin.
3. Monoglycerides or diglycerides or both of fat-forming fatty acids. The total weight of such ingredients is not more than 0.2% of the weight of the finished fruit sherbet. If the preparation used is one of having a high proportion of monoglycerides (over 90%), it may be preblended with edible fat, but the amount of such fat does not exceed 20% by weight of the blend, and the total amount of the blend

used does not exceed 0.2% of the weight of the finished fruit sherbet.

4. Polysorbate 65, polysorbate 80, or both (the limit on either used separately or both used in combination of not more than 0.1% by weight of the finished frozen dessert).
5. Propylene glycol alginate (limit of not more than 0.5% by weight of the finished frozen dessert).
6. Citric acid, tartaric acid, malic acid, lactic acid, ascorbic acid, phosphoric acid, or any combination of two or more of these in such quantity as seasons the finished food.
7. Casein prepared by precipitation with gums, ammonium caseinate, calcium caseinate, potassium caseinate, sodium caseinate.
8. Any natural food flavoring.
9. Any artificial flavoring.
10. Coloring, including artificial coloring.
11. Microcrystalline cellulose, in a quantity not to exceed 0.5% of the weight of the finished fruit sherbet.
12. When one or more of the optional thickening ingredients in subdivision 2 or 5 of this subsection are used, dioctyl sodium sulfosuccinate may be used in a quantity not in excess of 0.5% by weight of such ingredients.

F. The name of each such fruit sherbet is "_____ sherbet," the blank being filled in with the common name of the fruit or fruits from which the fruit ingredients used are obtained. When the names of two or more fruits are included, such names shall be arranged in order of predominance, if any, by weight of the respective fruit ingredients used.

G. When the optional ingredients artificial coloring or artificial flavorings are used in fruit sherbet they shall be named on the labels as follows:

1. The label shall designate artificial coloring by the statement "artificially colored," "artificial coloring added," "with added artificial coloring," or "_____ an artificial color added," the blank being filled in with the name of the artificial coloring used.
2. The label shall designate artificial flavoring by the statement "artificially flavored," "artificial flavoring added," "with added artificial flavoring," or "_____ an artificial flavor added," the blank being filled in with the name of the artificial flavoring used.
3. Whenever artificial flavoring is not added as such but as a component of some other ingredient, the label shall include the statement "_____ artificially flavored," the blank being filled in with the name of such other ingredient.

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4. When the optional ingredient microcrystalline cellulose specified in subdivision 11 of subsection E of this section is used, the label shall bear the statement "microcrystalline cellulose added" or "with added microcrystalline cellulose." Label statements may be combined, as for example, "with added artificial flavoring and artificial coloring."

H. Where one or more of the optional ingredients artificial coloring or artificial flavoring are used and there appears on the label any representation as to the fruit or fruits in the sherbet, such representation shall be immediately and conspicuously accompanied by appropriate label statements as prescribed in subsection G of this section, showing the optional ingredients used.

I. Wherever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements specified in this section, showing the optional ingredients used, shall immediately and conspicuously precede or follow such name without intervening written, printed, or graphic matter.

J. Fruit sherbet mix is the pasteurized unfrozen combination of ingredients that when frozen while stirring will produce a product conforming to the definition of fruit sherbet.

2VAC5-510-100. Fruit sherbet mix. (Repealed.)

~~Fruit sherbet mix is the pasteurized unfrozen combination of ingredients which when frozen while stirring will produce a product conforming to the definition of fruit sherbet.~~

2VAC5-510-110. Water ices; identity; label statement of optional ingredients; water ice mix.

A. Water ices are the foods, each of which is prepared by freezing, while stirring, a mix composed of one or more of the optional characterizing fruit ingredients specified in subsection B of this section, sweetened with one or more of the optional sweetening ingredients specified in subsection C of this section. One or more of the optional ingredients specified in subsection D of this section may be used, subject to the conditions hereinafter set forth. The titratable acidity of the finished water ice, calculated as lactic acid, is not less than 0.35%. The mix, with or without added water, may be seasoned with salt, and may be homogenized. The finished water ice weighs not less than six pounds to the gallon.

B. The optional fruit ingredients referred to in subsection A of this section are any mature fruit or the juice of any mature fruit. The fruit or fruit juice used may be fresh, frozen, canned, concentrated, or partially or wholly dried. The fruit may be thickened with pectin or other of the optional ingredients named in ~~paragraph subdivision~~ 1 of subsection D of this section subject to the restriction on the total quantity of such substances in water ices prescribed in that ~~paragraph subdivision~~. The fruit is prepared by the removal of pits, seeds, skins, and cores where such removal is usual in

preparing that kind of fruit for consumption as fresh fruit. The fruit may be screened, crushed, or otherwise comminuted. It may be acidulated with citric acid, ascorbic acid, or phosphoric acid. In the case of fruit or fruit juices from which part of the water is removed, substances contributing flavor volatilized during water removal may be condensed and reincorporated in the concentrated fruit or fruit juice. In the case of citrus fruits, the whole fruit, including the peel but excluding the seeds, may be used, and in the case of citrus juice or concentrated citrus juices, cold-pressed citrus oil may be added thereto in an amount not exceeding that which would have been obtained if the whole fruit had been used. The quantity of fruit ingredients used is such that in relation to the weight of the finished water ice, the weight of fruit or fruit juice as the case may be, including water necessary to reconstitute partially or wholly dried fruits or fruit juices to their original moisture content, is not less than ~~2%~~ 2.0% in the case of citrus ices, ~~6%~~ 6.0% in the case of berry ices, and 10% in the case of ices prepared with other fruits.

C. The optional sweetening ingredients referred to in subsection A of this section are: Sugar (sucrose), dextrose, invert sugar (paste or sirup), glucose sirup, dried glucose sirup, corn sirup, dried corn sirup, malt sirup, malt extract, dried malt sirup, dried malt extract, maltose sirup, dried maltose sirup.

D. Other optional ingredients referred to in subsection A of this section are:

1. a. Agar-agar, algin (sodium alginate), egg white, gelatin, gum acacia, guar seed gum, gum karaya, locust bean gum, oat gum, gum tragacanth, hydroxypropyl methyl cellulose, carrageenan, salts of carrageenan, furcelleran, salts of furcelleran, propylene glycol alginate, pectin, psyllium seed husk, sodium carboxymethylcellulose. The total weight of the solids of any such ingredient used singly, or of any combination of two or more such ingredients used, including any such ingredient added separately to the fruit ingredient, is not more than 0.5% of the weight of the finished water ice. Such ingredients may be added in admixture with dextrin, propylene glycol, or glycerin.

b. When one or more of the optional thickening ingredients in ~~subparagraph subdivision~~ subdivision a of this ~~paragraph subdivision~~ are used, dioctyl sodium sulfosuccinate may be used in a quantity not in excess of 0.5% of weight of such ingredients.

2. Citric acid, tartaric acid, malic acid, lactic acid, ascorbic acid, phosphoric acid, or any combination of two or more of these in such quantity as seasons the finished food.

3. Any natural flavoring.

4. Any artificial flavoring.

5. Coloring, including artificial coloring.

E. The name of each such water ice is " _____ ice," the blank being filled with the common name of the fruit or fruits from which the fruit ingredient used is obtained. When the names of two or more fruits are included such names shall appear in the order of predominance, if any, by weight of the respective fruit ingredients used.

F. When the optional ingredients artificial coloring and artificial flavoring are used in water ices they shall be named on the labels as follows:

1. The label shall designate artificial flavoring by the statement "artificially flavored," "artificial flavoring added," "with added artificial flavoring," or " _____, an artificial flavor added," the blank being filled in with the name of the artificial flavoring used.

Label statements may be combined, as for example, "flavoring and artificial coloring added."

G. Where one or more of the optional ingredients artificial coloring or artificial flavoring are used and there appears on the labeling any representation as to the fruit or fruits in the ice, such representation shall be immediately and conspicuously accompanied by appropriate label statements as prescribed in subsection F of this section, showing the optional ingredients used.

H. Wherever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements set out in this section showing the optional ingredients used shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter.

I. Water ice mix is the unfrozen combination of ingredients that when frozen while stirring will produce a product conforming to the definition of water ice.

2VAC5-510-120. ~~Water ice mix. (Repealed.)~~

~~Water ice mix is the unfrozen combination of ingredients which when frozen while stirring will produce a product conforming to the definition of water ice.~~

2VAC5-510-130. Nonfruit sherbets; identity; label statement of optional ingredients; nonfruit sherbet mix.

A. Nonfruit sherbets are the foods each of which is prepared by freezing, while stirring, a mix composed of one or more of the optional characterizing ingredients specified in subsection B of this section and one or more of the optional dairy ingredients specified in subsection C of this section, sweetened with one or more of the optional sweetening ingredients specified in subsection D of this section. One or more of the optional ingredients specified in subsection E of this section may be used, subject to the conditions hereinafter set forth. The mix of combined dairy ingredients, with or without other ingredients, is pasteurized. The mix, with or without added water, may be seasoned with salt and may be

homogenized. The optional dairy ingredients used and the content of milkfat and nonfat milk solids therein are such that the weight of milkfat is not less than 1.0% and not more than 2.0% and their weight of total milk solids is not less than 2.0% and not more than 5.0% of the weight of the finished nonfruit sherbets. The optional caseinates specified in subdivision 7 of subsection E of this section are not deemed to be milk solids. The finished nonfruit sherbet weighs not less than six pounds to the gallon; except that when the optional ingredients microcrystalline cellulose specified in subdivision 9 of subsection E of this section is used, the finished nonfruit sherbet weighs not less than six pounds to the gallon, exclusive of the weight of the microcrystalline cellulose.

B. The optional characterizing ingredients referred to in subsection A of this section are:

1. Ground spice or infusion of coffee or tea.
2. Chocolate or cocoa, including sirup.
3. Confectionery.
4. Distilled alcoholic beverage, including liqueurs or wine, in an amount not to exceed that required for flavoring the sherbet.
5. Any natural or artificial food flavoring, except any having a characteristic fruit or fruit-like flavor.

C. The optional dairy ingredients referred to in subsection A of this section are: cream, dried cream, plastic cream (sometimes known as concentrated milkfat), butter, butter oil, milk, concentrated milk, evaporated milk, super-heated condensed milk, sweetened condensed milk, dried milk, skim milk, concentrated skim milk, evaporated skim milk, condensed skim milk, superheated condensed skim milk, sweetened condensed skim milk, sweetened condensed part-skim milk, nonfat dry milk, sweet cream buttermilk, condensed sweet cream buttermilk, dried sweet cream buttermilk, skim milk that has been concentrated and from which part of the lactose has been removed by crystallization, concentrated cheese whey, and dried cheese whey. Water may be added or water may be evaporated from the mix. The sweet cream buttermilk and the concentrated sweet cream buttermilk or dried sweet cream buttermilk, when adjusted with water to a total solids content of 8.5%, has a titratable acidity of not more than 0.17% calculated as lactic acid. The term "milk" as used in this section means cow's milk. Dried cheese whey is uniformly light in color, free from brown and black scorched particles, and has an alkalinity of ash not more than 225 milliliters 0.1 N HC1 per 100 grams, a bacterial count of not more than 50,000 per gram, and, as adjusted with water to a total solids content of 6.5%, a titratable acidity of not more than 0.16% calculated as lactic acid. Concentrated cheese whey has an alkalinity of ash not more than 115 milliliters of 0.1 N HC1 per 100 grams, a bacterial count of

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not more than 50,000 per gram, and, as adjusted with water to a total solids content of 6.5%, a titratable acidity of not more than 0.18% calculated as lactic acid.

D. The optional sweetening ingredients referred to in subsection A of this section are: sugar (sucrose), dextrose, invert sugar (paste or sirup), glucose sirup, dried glucose sirup, corn sirup, dried corn sirup, malt sirup, malt extract, dried malt sirup, dried malt extract, maltose sirup, dried maltose sirup.

E. Other optional ingredients referred to in subsection A of this section are:

1. Liquid eggs, frozen eggs, dried eggs, egg yolks, frozen yolks, dried yolks; but the weight of egg yolk solids therein is less than 0.5% of the weight of the finished nonfruit sherbet.

2. Agar-agar, algin (sodium alginate), calcium sulfate, egg white, gelatin, gum acacia, guar seed gum, gum karaya, locust bean gum, oat gum, gum tragacanth, hydroxypropyl methylcellulose, carrageenan, salts of carrageenan, furcelleran, salts of furcelleran, lecithin, pectin, psyllium seed husk, sodium carboxymethylcellulose. The total weight of the solids of any such ingredient used singly or of any combination of two or more such ingredients used is not more than 0.5% of the weight of the finished nonfruit sherbet. Such ingredients may be added in admixture with dextrin, propylene glycol, or glycerin.

3. Monoglycerides or diglycerides or both of fat-forming fatty acids. The total weight of such ingredients is not more than 0.2% of the weight of the finished nonfruit sherbet. If the preparation used is one having a high proportion of monoglycerides (over 90%), it may be preblended with edible fat, but the amount of such fat does not exceed 20% by weight of the blend and the total amount of the blend used does not exceed 0.2% of the weight of the finished nonfruit sherbet.

4. Polysorbate 65, polysorbate 80, or both (limit on either used separately or both used in combination of not more than 0.1% by weight of the finished frozen dessert).

5. Propylene glycol alginate (limit of not more than 0.5% by weight of the finished frozen dessert).

6. Citric acid, tartaric acid, malic acid, lactic acid, ascorbic acid, phosphoric acid, or any combinations of two or more of these in such quantity as seasons the finished food.

7. Casein prepared by precipitation with gums, ammonium caseinate, calcium caseinate, potassium caseinate, sodium caseinate.

8. Coloring, including artificial color.

9. Microcrystalline cellulose, in a quantity not to exceed 0.5% of the weight of the finished nonfruit sherbet.

10. When one or more of the optional thickening ingredients in subdivision 2 or 5 of this subsection are used, dioctyl sodium sulfosuccinate may be used in a quantity not in excess of 0.5% by weight of such ingredients.

F. Except as provided for in subsection G of this section, the name of each such nonfruit sherbet is ". . . . sherbet," the blank being filled in with the common or usual name or names of the characterizing flavor or flavors; for example, "peppermint."

G. If the characterizing flavor is vanilla, the name of the food is ". . . . sherbet," the blank being filled in as specified by 2VAC5-510-30 G 2 and 5 a.

H. When the optional ingredients artificial flavoring, artificial coloring, or microcrystalline cellulose are used in nonfruit sherbet, they shall be named on the label as follows:

1. If the flavoring ingredient or ingredients consists exclusively of artificial flavoring, the label designation shall be "artificially flavored."

2. If the flavoring ingredients are a combination of natural and artificial flavors, the label designation shall be "artificial and natural flavoring added."

3. The label shall designate artificial coloring by the statement "artificially colored," "artificial coloring added," "with added artificial coloring," or ". . . ., an artificial color added," the blank being filled in with the name of the artificial coloring used.

4. When the optional ingredient microcrystalline cellulose is used, the label shall bear the statement "microcrystalline cellulose added" or "with added microcrystalline cellulose."

I. Wherever there appears on the label any representation as to the characterizing flavor or flavors of the food and such flavor or flavors consist in whole or in part of artificial flavoring, the statement required by ~~subdivisions~~ subdivision 1 or 2 of subsection H of this section, as appropriate, shall immediately and conspicuously precede or follow such representation, without intervening written, printed, or graphic matter, except that the word "sherbet" may intervene, in a size reasonably related to the prominence of the name of the characterizing flavor and in any event the size of the type is not less than 6-point on packages containing less than one pint, not less than 8-point on packages containing at least one pint but less than one-half gallon, not less than 10-point on packages containing at least one-half gallon but less than one gallon, and not less than 12-point on packages containing one gallon or over.

J. Except as specified in subsection I of this section, the statements required by subsection H of this section shall be set forth on the principal display panel or panels of the label with such prominence and conspicuousness as to render them

likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

K. Nonfruit sherbet mix is the unfrozen combination of ingredients that when frozen while stirring will produce a product conforming to the definition of nonfruit sherbet.

2VAC5-510-140. Nonfruit sherbet mix. (Repealed.)

~~Nonfruit sherbet mix is the unfrozen combination of ingredients which when frozen while stirring will produce a product conforming to the definition of nonfruit sherbet.~~

2VAC5-510-150. Nonfruit water ices; identity; label statement of optional ingredients; nonfruit water ice mix.

A. Nonfruit water ices are the foods each of which is prepared by freezing, while stirring, a mix composed of one or more of the optional characterizing ingredients specified in subsection B of this section, sweetened with one or more of the optional sweetening ingredients specified in subsection C of this section. One or more of the optional ingredients specified in subsection D of this section may be used, subject to the conditions hereinafter set forth. The mix, with or without added water, may be seasoned with salt and may be homogenized. The finished nonfruit water ice weighs not less than six pounds to the gallon.

B. The optional characterizing ingredients referred to in subsection A of this section are:

1. Ground spice or infusion of coffee or tea.
2. Chocolate or cocoa, including sirup.
3. Confectionery.
4. Distilled alcoholic beverage, including liqueurs or wine, in an amount not to exceed that required for flavoring the water ice.
5. Any natural or artificial food flavoring, except any having a characteristic fruit or fruit-like flavor.

C. The optional sweetening ingredients referred to in subsection A of this section are: Sugar (sucrose), dextrose, invert sugar (paste or sirup), glucose sirup, dried glucose sirup, corn sirup, dried corn sirup, malt sirup, malt extract, dried malt sirup, dried malt extract, maltose sirup, dried maltose sirup.

D. Other optional ingredients referred to in subsection A of this section are:

1. Agar-agar, algin (sodium alginate), egg white, gelatin, gum acacia, guar seed gum, gum karaya, locust bean gum, oat gum, gum tragacanth, hydroxypropyl methylcellulose, carrageenan, salts of carrageenan, furcelleran, salts of furcelleran, propylene glycol alginate, pectin, psyllium seed husk, sodium carboxymethylcellulose. The total weight of the solids of any such ingredient used singly, or of any combination of two or more such ingredients used,

is not more than 0.5% of the weight of the finished nonfruit water ice. Such ingredients may be added in admixture with dextrin, propylene glycol, or glycerin.

When one or more of the optional thickening ingredients in this subdivision are used, dioctyl sodium sulfosuccinate may be used in a quantity not in excess of 0.5% by weight of such ingredients.

2. Citric acid, tartaric acid, malic acid, lactic acid, ascorbic acid, phosphoric acid, or any combination of two or more of these in such quantity as seasons the finished food.

3. Coloring, including artificial coloring.

E. Except as provided for in subsection F of this section, the name of each such nonfruit water ice is ". . . ice," the blank being filled in with the common or usual name or names of the characterizing flavor or flavors; for example, "peppermint."

F. If the characterizing flavor used is vanilla, the name of the food is ". . . ice," the blank being filled in as specified by 2VAC5-510-30 G 2 and 5.

G. When the optional ingredients artificial flavoring or artificial coloring are used in nonfruit water ice, they shall be named on the label as follows:

1. If the flavoring ingredient or ingredients consist exclusively of artificial flavoring, the label designation shall be "artificially flavored."
2. If the flavoring ingredients used are a combination of natural and artificial flavors, the label designation shall be "artificial and natural flavoring added."
3. The label shall designate artificial coloring by the statement "artificially colored," "artificial coloring added," "with added artificial coloring," or ". . . , an artificial color added," the blank being filled in with the name of the artificial coloring used.

H. Wherever there appears on the label any representation as to the characterizing flavor or flavors of the food and such flavor or flavors consist in whole or in part of artificial flavoring, the statement required by ~~paragraph~~ subdivision 1 or ~~paragraph~~ 2 of subsection G of this section, as appropriate, shall immediately and conspicuously precede or follow such representation, without intervening written, printed, or graphic matter, except that the word "ice" may intervene, in a size reasonably related to the prominence of the name of the characterizing flavor and in any event the size of the type is not less than 6-point on packages containing less than one pint, not less than 8-point on packages containing at least one pint but less than one-half gallon, not less than 10-point on packages containing at least one-half gallon but less than one gallon and not less than 12-point on packages containing one gallon or over.

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I. Except as specified in subsection H of this section, the statements required by subsection G of this section shall be set forth on the principal display panel or panels of the label with such prominence and conspicuousness as to render them likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

J. Nonfruit water ice mix is the unfrozen combination of ingredients that when frozen while stirring will produce a product conforming to the definition of nonfruit water ice.

2VAC5-510-160. Nonfruit water ice mix. (Repealed.)

~~Nonfruit water ice mix is the unfrozen combination of ingredients which when frozen while stirring will produce a product conforming to the definition of nonfruit water ice.~~

2VAC5-510-170. Artificially sweetened ice cream or frozen dietary dairy dessert; identity; label statement of optional ingredients; artificially sweetened ice cream mix or frozen dietary dairy dessert mix.

A. Artificially sweetened ice cream or frozen dietary dairy dessert means ice cream manufactured, prepared, or processed for consumption by persons who wish to restrict their intake of ordinary sweetening ingredients and shall conform to the definition and standard of identity prescribed for ice cream in 2VAC5-510-30 ~~of this chapter~~, except that it shall be sweetened with an artificial sweetening agent and contains edible carbohydrates other than sugar. The artificial sweetening agent and the edible carbohydrates shall be approved by the Federal Food and Drug Administration and no sugars other than those naturally present in the milk solids or flavoring agent shall be added thereto.

B. The manufacturer shall place the product in packages or containers which shall be conspicuously labeled either "artificially sweetened" immediately preceding the words "ice cream" in similar type at least one-half the size of the type used for the words "ice cream" and on the same contrasting background, or "frozen dietary dairy dessert."

C. The label shall also contain a statement in terms of percentage by weight of protein, fat, and carbohydrates, the total number of calories per ounce, the number of calories contributed by carbohydrates and any carbohydrates other than lactose, and the name of each ingredient entering into the composition other than flavors.

D. The following statement shall appear conspicuously following the declaration of the artificial sweetener used, such as "Contains . . . % saccharine, (or sodium salt of saccharine, as the case may be), a non-nutritive artificial sweetener which should be used only by persons who must restrict their intake of ordinary sweets." The blank is to be filled in with the percent by weight of saccharine or other artificial sweetener in said product.

E. The product shall not be sold in any manner other than in sealed or unbroken packages or containers from one or more separate compartments of a refrigerated container or cabinet.

F. Artificially sweetened ice cream mix or frozen dietary dairy dessert mix is the pasteurized unfrozen combination of ingredients that when frozen while stirring will produce a product conforming to the definition of artificially sweetened ice cream or frozen dietary dairy dessert.

2VAC5-510-180. Artificially sweetened ice cream mix or frozen dietary dairy dessert mix. (Repealed.)

~~Artificially sweetened ice cream mix or frozen dietary dairy dessert mix is the pasteurized unfrozen combination of ingredients which when frozen while stirring will produce a product conforming to the definition of artificially sweetened ice cream or frozen dietary dairy dessert.~~

2VAC5-510-190. Artificially sweetened ice milk; identity; label statement of optional ingredients; artificially sweetened ice milk mix.

A. Artificially sweetened ice milk means ice milk manufactured, prepared, or processed for consumption by persons who wish to restrict their intake of ordinary sweetening ingredients and shall conform to the definition and standard of identity prescribed for ice milk in 2VAC5-510-70 ~~of this chapter~~, except that it shall be sweetened with an artificial sweetening agent and contains edible carbohydrates other than sugar. The artificial sweetening agent and the edible carbohydrates must be approved by the Federal Food and Drug Administration and no sugars other than those naturally present in the milk solids or flavoring agent shall be added thereto.

B. The manufacturer shall place the product in packages or containers which shall be conspicuously labeled "artificially sweetened" immediately preceding the words "ice milk" in similar type at least one-half the size of the type used for the words "ice milk" and on the same contrasting background.

C. The label shall also contain a statement in terms of percentage by weight of protein, fat, and carbohydrates, the total number of calories per ounce, the number of calories contributed by carbohydrates and any carbohydrates other than lactose, and the name of each ingredient entering into the composition other than flavors.

D. The following statement shall appear conspicuously following the declaration of the artificial sweetener used, such as "contains . . . % saccharine, (or sodium salt of saccharine, or other artificial sweetener, as the case may be), a nonnutritive artificial sweetener which should only be used by persons who must restrict their intake of ordinary sweets." The blank is to be filled in with the percent by weight of saccharine or other artificial sweetener in said product.

E. The product shall not be sold in any manner other than in sealed or unbroken packages or containers from one or more separate compartments of a refrigerated container or cabinet.

F. Artificially sweetened ice milk mix is the pasteurized unfrozen combination of ingredients that when frozen while stirring will produce a product conforming to the definition of artificially sweetened ice milk.

2VAC5-510-200. Artificially sweetened ice milk mix. (Repealed.)

~~Artificially sweetened ice milk mix is the pasteurized unfrozen combination of ingredients which when frozen while stirring will produce a product conforming to the definition of artificially sweetened ice milk.~~

2VAC5-510-210. Frozen yogurt; identity; label statement of optional ingredients; frozen yogurt mix; shipping frozen yogurt mix.

A. Frozen yogurt is a food which is prepared by freezing while stirring a pasteurized mix, containing one or more of the following ingredients, whole milk, partially defatted milk, skim milk, other milk products, and with or without fruits, nuts, flavoring materials, sweeteners, stabilizers, emulsifiers, and any other safe and suitable approved ingredient which is cultured after pasteurization by one or more strains of *Lactobacillus bulgaricus* and *Streptococcus thermophilus* provided however, fruits, nuts, or other flavoring materials may be added before or after the mix is pasteurized and cultured. The standard plate count requirement for frozen desserts shall apply only to the mix prior to culturing. The finished frozen yogurt shall weigh not less than 5 pounds per gallon. The name of the product is "frozen yogurt." The label on a package of frozen yogurt, in addition to other required information, shall include a complete list of all ingredients in descending order or predominance; for the purposes of Part III (2VAC5-510-30 et seq.) of this chapter the strains of bacteria may be collectively referred to as yogurt culture.

B. Frozen yogurt mix is the pasteurized unfrozen combination of ingredients that when frozen while stirring will produce a product conforming to the definition of frozen yogurt.

C. Frozen yogurt mix may be shipped in a frozen state to plants and frozen desserts retail establishments.

2VAC5-510-220. Frozen yogurt mix. (Repealed.)

~~Frozen yogurt mix is the pasteurized unfrozen combination of ingredients which when frozen while stirring will produce a product conforming to the definition of frozen yogurt.~~

2VAC5-510-230. Shipping frozen yogurt mix. (Repealed.)

~~Frozen yogurt mix may be shipped in a frozen state to plants and frozen desserts retail establishments.~~

2VAC5-510-240. Quiescently frozen confection; identity; label statement of optional ingredients; quiescently frozen confection mix.

A. Quiescently frozen confection means the frozen, sweetened, flavored product in the manufacture of which freezing has not been accompanied by stirring or agitation, generally known as quiescent freezing. This confection may be acidulated with harmless organic acid, may contain milk products, may be made with or without added harmless natural or artificial flavoring, with or without added harmless coloring. The finished product may contain not more than one-half of 1.0% by weight of stabilizing agents. The finished product shall contain not less than 17% by weight of total food solids. This confection must be manufactured in the form of servings, individually packaged, bagged or otherwise wrapped, properly labeled and purveyed to the consumer in its original factory-filled package. In the production of this quiescently frozen confection no processing or mixing prior to quiescent freezing shall be used that develops in the finished confection mix any physical expansion in excess of 10%.

B. Quiescently frozen confection mix is the unfrozen combination of ingredients that when frozen will produce a product conforming to the definition of quiescently frozen confection.

2VAC5-510-250. Quiescently frozen confection mix. (Repealed.)

~~Quiescently frozen confection mix is the unfrozen combination of ingredients which when frozen will produce a product conforming to the definition of quiescently frozen confection.~~

2VAC5-510-260. Quiescently frozen dairy confection; identity; label statement of optional ingredients; quiescently frozen dairy confection mix.

A. Quiescently frozen dairy confection means the frozen product made from water, milk products and sweetening agents, with added harmless coloring, with or without added stabilizing and emulsifying ingredients, and in the manufacture of which freezing has not been accompanied by stirring or agitation, generally known as quiescent freezing. It contains not less than 13% by weight of total milk solids, not less than 33% by weight of total food solids, not more than one-half of 1.0% by weight of stabilizing agents, not more than one-fifth of 1.0% by weight of monoglycerides or diglycerides or a combination of both, not more than one-tenth of 1.0% by weight of polysorbate 65 or polysorbate 80 or a combination of both. This confection must be manufactured in the form of servings individually packaged, bagged or otherwise wrapped, properly labeled and purveyed to the consumer in its original factory-filled package. In the production of this quiescently frozen dairy confection no processing or mixing prior to quiescent freezing shall be used

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that develops in the finished confection mix any physical expansion in excess of 10%.

B. Quiescently frozen dairy confection mix is the pasteurized unfrozen combination of ingredients that when frozen will produce a product conforming to the definition of quiescently frozen dairy confection.

2VAC5-510-270. Quiescently frozen dairy confection mix. (Repealed.)

~~Quiescently frozen dairy confection mix is the pasteurized unfrozen combination of ingredients which when frozen will produce a product conforming to the definition of quiescently frozen dairy confection.~~

2VAC5-510-290. Mellorine; identity; label statement of ingredients; mellorine mix.

A. Mellorine conforms to the definition and standard of identity, and is subject to the requirements for optional ingredients, prescribed for ice cream by 2VAC5-510-30, except that in place of optional dairy ingredients containing butterfat as permitted pursuant to 2VAC5-510-30 C, edible fats or oils other than milkfat are used, and provided further that the weight of edible fats or oils other than milkfat, is not less than 10% of the weight of the finished mellorine and the weight of the milk solids not fat is not less than 10% of the weight of the finished mellorine, except that when one or more of the bulky optional ingredients as specified in ~~paragraphs~~ 2VAC5-510-30 B 3, 4, 5, 6, 7, or 8 are used, the weight of the edible fats or oils other than milkfat and the combined weight of edible fats or oils other than milkfat and milk solids not fat, exclusive of any fat and milk solids not fat in any malted milk used, are not less than 10% and 20% respectively, of the remainder obtained by subtracting the weight of such optional ingredients as provided in 2VAC5-510-30 A, from the weight of the finished mellorine, but in no case is the weight of edible fats or oils other than milkfat, or the combined weight of edible fats and oils other than milkfat and milk solids not fat to be less than 8.0% and 16% respectively of the weight of the finished mellorine, and that whenever provisions appear in 2VAC5-510-30 referring to milkfat, it shall be understood to be edible fats or oils other than milkfat in the case of mellorine.

B. The name of the product is "mellorine."

C. When any artificial color is used in mellorine, directly or as a component of any other ingredient, the label shall bear the statement, "artificially colored," "artificial coloring added," "with added artificial color," or " . . . , an artificial color added," the blank to be filled in with the common or usual name of the artificial color; or in lieu thereof, in case the artificial color is a component of another ingredient, " . . . , artificially colored."

D. If both artificial color and artificial flavoring are used, the label statements may be combined.

E. Mellorine shall be manufactured in the form of servings individually packaged, bagged, or otherwise wrapped, properly labeled and purveyed to the consumer in its original plant sealed container.

F. The label on a package of mellorine shall conform to the provisions of 2VAC5-510-30 G and in addition to other required information shall include the name "Mellorine" in a conspicuous manner. Mellorine may not be designated by the use of the word "cream" or its phonetic equivalent.

G. Mellorine mix is the pasteurized unfrozen combination of ingredients that when frozen while stirring will produce a product conforming to the definition of mellorine.

2VAC5-510-300. Mellorine mix. (Repealed.)

~~Mellorine mix is the pasteurized unfrozen combination of ingredients which when frozen while stirring will produce a product conforming to the definition of mellorine.~~

2VAC5-510-310. Parevine; parevine mix.

A. Parevine is the food prepared by freezing, while stirring, a pasteurized mix composed of: (i) one or more edible vegetable fats; (ii) any optional sweetening ingredient except lactose and (iii) protein or any other source of carbohydrate food solids. Parevine shall not contain any milk or meat products or any derivatives of such products.

B. Its fat content shall not be less than 10%, except that when bulky optional characterizing ingredients are used, the fat content may be reduced, as a result of the addition of such ingredients, but shall in no case be less than 8.0%.

C. Its content of food solids shall not be less than 1.3 pounds per gallon of the finished product.

D. The weight of the finished product shall not be less than 4.5 pounds per gallon.

E. Parevine shall be offered in the form of servings individually packaged, bagged or wrapped and properly labeled and purveyed to the consumer in original plant sealed container. When any artificial color or flavor is used in parevine directly or indirectly as a component of any other ingredient, then it must be declared in the label statement, "Artificial color and flavor added," or words of like import.

F. Parevine mix is the pasteurized unfrozen combination of ingredients that when frozen while stirring will produce a product conforming to the definition of parevine.

2VAC5-510-320. Parevine mix. (Repealed.)

~~Parevine mix is the pasteurized unfrozen combination of ingredients which when frozen while stirring will produce a product conforming to the definition of parevine.~~

2VAC5-510-330. Lowfat parevine; lowfat parevine mix.

A. Lowfat parevine is the food prepared by freezing, while stirring, a pasteurized mix composed of: (i) one or more

edible vegetable fats; (ii) any optional sweetening ingredient except lactose; and (iii) protein or any other source of carbohydrate food solids. Lowfat parevine shall not contain any milk or meat products nor any derivatives of such products.

B. Its fat content shall not be more than 6.0%.

C. Its content of food solids shall not be less than 1.3 pounds per gallon of the finished product.

D. The weight of the finished product shall not be less than 4.5 pounds per gallon.

E. Lowfat parevine shall be offered in the form of servings individually packaged, bagged or wrapped and properly labeled and purveyed to the consumer in original plant sealed container. When any artificial color or flavor is used in lowfat parevine directly or indirectly as a component of any other ingredient, then it must be declared in the label statement, "Artificial color and flavor added," or words of like import.

F. Lowfat parevine mix is the pasteurized unfrozen combination of ingredients that when frozen while stirring will produce a product conforming to the definition of lowfat parevine.

2VAC5-510-340. ~~Lowfat parevine mix. (Repealed.)~~

~~Lowfat parevine mix is the pasteurized unfrozen combination of ingredients which when frozen while stirring will produce a product conforming to the definition of lowfat parevine.~~

2VAC5-510-350. Freezer made milk shake; identity; label statement of optional ingredients; freezer made milk shake mix.

A. Freezer made milk shake means a pure, clean, wholesome semi-viscous drink prepared by stirring while freezing in a dispensing freezer a pasteurized mix obtained from an approved source consisting of milkfat, milk solids not fat, water, optional sweetening ingredients, with or without egg or egg products, with harmless flavoring, with or without harmless coloring and with or without approved stabilizer or approved emulsifier. It shall contain not less than three and one-fourth percent milkfat. It shall contain not less than 10% milk solids not fat, it shall contain not more than one-half percent by weight of stabilizer and not more than one-fifth of ~~1%~~ 1.0% of emulsifier. Freezer made milk shakes may only be sold or served from a dispensing freezer and may not be sold hard frozen.

B. Other freezer made shakes including jumbo shake, thick shake, T.V. shake, or any coined or trade name containing the word "shake" shall meet the requirements of subsection A of this section, except that the minimum percent of milkfat may be less than three and one-fourth percent.

C. "Shakes" not meeting the requirement for "milk" shakes shall not be advertised, sold or served as a milk shake.

D. Freezer made milk shake mix is the pasteurized unfrozen combination of ingredients that when frozen while stirring will produce a product conforming to the definition of freezer made milk shake.

2VAC5-510-360. ~~Freezer made milk shake mix. (Repealed.)~~

~~Freezer made milk shake mix is the pasteurized unfrozen combination of ingredients which when frozen while stirring will produce a product conforming to the definition of freezer made milk shake.~~

2VAC5-510-390. Imitation frozen desserts; identity; prohibitions, exceptions, filings confidential.

A. Imitation frozen dessert is any frozen substance, mixture or compound regardless of the name under which it is represented, which is made in imitation or semblance of ice cream, or is prepared or frozen as ice cream is customarily prepared or frozen, and which is not Ice Cream; Frozen Custard; French Ice Cream; and French Custard Ice Cream; Ice Milk; Fruit Sherbets; Water Ices; Non-Fruit Sherbets; Non-Fruit Water Ices; Artificially Sweetened Ice Cream or Frozen Dietary Dessert; Artificially Sweetened Ice Milk; Frozen Yogurt; Quiescently Frozen Confection; Quiescently Frozen Dairy Confection; Mellorine; Parevine; Lowfat Parevine; Freezer Made Milk Shakes; and Freezer Made Shakes, as established by definitions and standards of identity in Part III (2VAC5-510-30 et seq.) of this chapter.

B. Powder or dry imitation frozen desserts mixes which contain no milk or other dairy product ingredients but contain dry whey, reduced minerals whey, whey protein concentrate, reduced lactose whey and/or optional caseinates specified in 2VAC5-510-30 E are exempted from the pasteurization requirements of ~~2VAC5-510-550 et seq~~ Part XII (2VAC5-510-550 et seq.) of this chapter. The wheys, caseinates or egg ingredients used in the formulation of these mixes shall have been pasteurized or subjected to any other method of process demonstrated to be equally efficient. Powder or dry imitation frozen dessert mixes shall contain no ingredients except those which are generally recognized as safe by the Federal Food and Drug Administration or those which are permitted by this chapter in a frozen dessert.

C. Imitation frozen desserts sold at the retail level may be drawn from a dispensing freezer and a sign must be plainly marked "Imitation," the blank being filled in with the name of the frozen dessert imitated, in a manner conspicuous to the public in letters at least three inches in height. Imitation frozen desserts shall not be dispensed for sale from packages or containers. "Dispensed" shall mean dipping and scooping from packages or containers.

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D. No imitation frozen desserts shall be manufactured, sold, advertised, offered or exposed for sale in this Commonwealth unless 30 days prior to such manufacture, advertisement, offer, exposure for sale or sale, the manufacturer, offeror or dealer shall file with the commissioner such intent. The filing herein required shall be on forms supplied by the commissioner and shall include such information as the name under which the imitation frozen dessert is to be advertised or offered for sale, ingredients including any optional ingredients, proportion of ingredients expressed in a percentage, method of preparation, and any other relevant information the commissioner may require.

E. Information filed pursuant to this section shall be confidential and used solely for administration and enforcement of this chapter.

F. Imitation frozen desserts shall be considered as frozen desserts in the enforcement of Parts IV (2VAC5-510-410) through XIV (2VAC5-510-630 et seq.) of this chapter.

~~2VAC5-510-400. Imitation frozen desserts; prohibitions, exceptions, filings confidential. (Repealed.)~~

~~A. No imitation frozen desserts shall be manufactured, sold, advertised, offered or exposed for sale in this Commonwealth unless 30 days prior to such manufacture, advertisement, offer, exposure for sale or sale, the manufacturer, offeror or dealer shall file with the commissioner such intent. The filing herein required shall be on forms supplied by the commissioner and shall include such information as the name under which the imitation frozen dessert is to be advertised or offered for sale, ingredients including any optional ingredients, proportion of ingredients expressed in a percentage, method of preparation, and any other relevant information the commissioner may require.~~

~~B. Information filed pursuant to this section shall be confidential and used solely for administration and enforcement of this chapter.~~

~~C. Imitation frozen desserts shall be considered as frozen desserts in the enforcement of Parts IV through XIV of this chapter.~~

Part IV

Adulterated or Misbranded Milk, Milk Products, Frozen Desserts or Frozen Desserts Mix

2VAC5-510-410. Prohibition.

No person shall produce, provide, sell, offer, or expose for sale, or have in possession with intent to sell any milk, milk product, other frozen dessert ingredients, frozen dessert ~~or~~ or frozen dessert mix which is adulterated or misbranded.

Part V Permits

2VAC5-510-420. Issuing, suspension and revocation of permits.

A. It shall be unlawful for any person who does not possess a permit from the Virginia Department of Agriculture and Consumer Services to bring into, send into, or receive into the Commonwealth of Virginia for sale, or to sell, or offer for sale therein, or to have in storage with intent to offer for sale or sell frozen desserts or frozen desserts mix identified in this chapter: Provided, that grocery stores, restaurants, soda fountains, and similar establishments where frozen desserts or frozen desserts mix are regularly served or sold at retail, but not processed, may be exempt from the requirements of this chapter.

B. Only a person who complies with the requirements of this chapter shall be entitled to receive and retain such a permit. Permits shall not be transferable with respect to persons or locations.

C. The State Regulatory Authority may immediately temporarily suspend such permit, without notice of hearing, whenever it has reason to believe that a public health hazard exists or is imminent, or in case of willful refusal to permit authorized inspection; provided that a formal notice and hearing shall be afforded such suspended permit holder within 72 hours of such suspension. In all other cases of violation of this chapter, the State Regulatory Authority may serve upon the holder a written notice of intent to suspend permit. This notice shall specify the violations in question and may afford the holder a reasonable opportunity to correct the violations; or the State Regulatory Authority shall afford the permit holder the opportunity ~~to be heard under the provisions of Chapter 1.1 of Title 9 for a formal hearing pursuant to §2.2-4020 of the Code of Virginia~~ before taking action to suspend or revoke a permit. A suspension of permit shall remain in effect until the violation has been corrected to the satisfaction of the State Regulatory Authority.

D. Upon gross or repeated violations, the State Regulatory Authority may revoke the permit following reasonable notice to the permit holder and an opportunity for a hearing. Part V ~~of this chapter~~ (2VAC5-510-420 et seq.) of this chapter is not intended to preclude the institution of court action.

2VAC5-510-500. Facilities.

A. Water supply.

1. Both hot and cold water of safe and sanitary quality shall be available in sufficient quantity for all plant operations and facilities. Water from other lines, when officially approved, may be used for boiler feed water and condenser water, if such water lines are completely separated from the water lines carrying the sanitary water supply, and if the equipment is constructed and controlled to prevent

contamination of any product or product contact surface. There shall be no cross-connections between safe and unsafe water lines or between private and public supply.

2. Bacteriological examination shall be made of the plant sanitary water supply at least once every six months by the appropriate State Regulatory Authority to determine purity and safety for use in processing or manufacturing dairy products.

B. Employee facilities.

1. In addition to toilet and dressing rooms, the plant shall provide the following employee facilities:

- a. Conveniently located sanitary drinking water;
- b. A locker or other suitable facility for each employee;
- c. Hand washing facilities, including hot and cold running water, soap or other detergents and sanitary rooms and at other places where necessary for the cleanliness of all personnel handling products; and
- d. Self-closing containers for used towels and other wastes.

2. A durable, legible sign shall be posted conspicuously in each toilet and dressing room directing employees to wash their hands before returning to work.

C. Steam. Steam shall be supplied in sufficient volume and pressure for satisfactory operation of each applicable piece of equipment. Steam that may come into direct contact with milk or dairy products shall be culinary steam. Culinary steam shall comply with the 3-A Accepted Practices ~~for "Producing Culinary Steam for Processing Milk and Milk Products,"~~ "Method of Producing Steam of Culinary Quality," Number 609-02 (3-A Sanitary Standards, Incorporated).

D. Disposal of wastes. The plant sewage system shall have sufficient slope and capacity to remove readily all waste from processing operations. Where a public sewer is not available, wastes shall be disposed of by methods approved by the State Regulatory Authority. Containers for the collection and holding of wastes other than dry waste paper shall be constructed of metal or other equally impervious material, kept covered with tight-fitting lids, and placed outside the plant on a concrete slab or on a rack raised at least 12 inches; however, waste containers may be kept inside a suitable enclosed, clean, and fly-proof room. Solid wastes shall be disposed of regularly and the containers cleaned before reuse. Dry waste paper shall be burned at the plant in an approved incinerator, or compressed or bagged and disposed of in an approved manner.

2VAC5-510-510. Equipment and utensils.

A. Construction and installation.

1. New equipment shall meet applicable 3-A Sanitary Standards. Equipment and utensils coming in contact with milk, dairy products, mix or frozen desserts, including sanitary pumps, piping, fittings, and connections, shall be constructed of stainless steel or other equally corrosion-resistant material. Where the use of stainless steel is not practicable, or in old equipment, other properly coated or plated metals may be approved temporarily. Nonmetallic parts having product contact surfaces shall be of materials that meet 3-A Sanitary Standards ~~for Plastic or Rubber-like Materials,~~ "Multiple-Use Rubber and Rubber-Like Materials Used as Product Contact Surfaces in Dairy Equipment," Number 18-03, and "Multiple-Use Plastic Materials Used as Product Contact Surfaces for Dairy Equipment," Number 20-21 (3-A Sanitary Standards, Incorporated).

2. Bulk storage and distribution equipment for handling liquid sweetening agents shall consist of suitable metals, alloys, or other materials which will withstand corrosive action by the ingredient; and the equipment and ingredients shall be protected from contamination.

3. All equipment and piping shall be designed and installed to be easily accessible for cleaning, shall be kept in good repair, and free from cracks and corroded surfaces. Milk pumps shall be of a sanitary type and easily dismantled, for cleaning or shall be of specifically approved construction to allow cleaning in place. New or rearranged equipment shall be set away from any wall or spaced in such a manner as to facilitate proper cleaning and to maintain good housekeeping. All parts or interior surfaces or equipment, pipes (except certain piping cleaned-in-place), or fittings, including valves and connections, shall be accessible for inspection. Cleaned-in-place sanitary piping and welded sanitary pipeline systems will be acceptable if properly engineered and installed according to 3-A Accepted Practices ~~for Permanently Installed Sanitary Product Pipelines and Cleaning Systems,~~ "Permanently Installed Product and Solution Pipelines and Cleaning Systems Used in Milk and Milk Product Processing Plants," Number 605-04 (3-A Sanitary Standards, Incorporated).

B. Pasteurization equipment.

1. Pasteurization equipment shall comply with 3-A Accepted Practices ~~for Sanitary Construction, Installation, Testing, and Operation of High Temperature Short Time Pasteurizers and 3 A Sanitary Standards for Non-Coiled Type Batch Pasteurizers,~~ "Sanitary Construction, Installation, Testing, and Operation of High Temperature Short-Time and Higher-Heat Shorter-Time Pasteurizer Systems," Number 603-06 and 3-A Sanitary Standards, "Non-Coiled Type Batch Pasteurizers for Milk and Milk Products," Number 24-02 (3-A Sanitary Standards, Incorporated).

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2. Heat treatment equipment used to reach temperatures higher than commonly used for pasteurization shall comply with appropriate sanitary construction and operating procedures approved by the State Regulatory Authority.

3. Whenever it is necessary to break a seal on such equipment, this equipment shall be properly adjusted and placed in correct operation immediately. The breaking of the seal and the adjustment made shall be reported immediately to the State Regulatory Authority in order that the equipment can be officially checked and resealed.

C. Cleaning and sanitizing.

1. Equipment, sanitary piping, and utensils used in receiving, storing, processing, manufacturing, packaging, and handling milk, dairy products, mix or frozen desserts, and all product contact surfaces of homogenizers, high-pressure pumps, and high-pressure lines shall be kept clean.

2. The packing glands on all agitators, pumps, and vats shall be inspected at regular intervals and kept clean.

3. After being cleaned, and immediately before use, all equipment coming in contact with milk dairy products, mix or frozen desserts shall have an effective bactericidal or sanitizing treatment.

4. Before use, equipment not designed for C-I-P cleaning shall have been disassembled and thoroughly cleaned and sanitized. Dairy cleaners, wetting agents, detergents, sanitizing agents, or other similar material may be used that will not contaminate or adversely affect dairy products. Steel wool or metal sponges shall not be used in the cleaning of any dairy equipment or utensils.

5. C-I-P cleaning shall be used only on equipment and pipeline systems that are designed and engineered for that purpose. Installation and cleaning procedures shall comply with ~~3-A Accepted Practices for Permanently Installed Sanitary Product Pipelines and Cleaning Systems~~, "Permanently Installed Product and Solution Pipelines and Cleaning Systems Used in Milk and Milk Processing Plants," Number 605-04 (3-A Sanitary Standards, Incorporated). An outline of the cleaning procedures to be followed shall be posted near the C-I-P equipment.

6. Applicable equipment and areas in the plant shall be thoroughly vacuumed regularly with a heavy-duty industrial vacuum cleaner. The material picked up shall be disposed of by burning or other means to destroy any insects present.

7. Exhaust stacks, elevators, and conveyors shall be inspected at regular intervals and kept clean.

DOCUMENTS INCORPORATED BY REFERENCE

~~3-A Accepted Practices For Permanently Installed Sanitary Product Pipelines and Cleaning Systems.~~

~~3-A Accepted Practices For Sanitary Construction, Installation, Testing and Operation of High Temperature Short Time Pasteurizers.~~

~~3-A Sanitary Standards For Non-Coiled Type Batch Pasteurizers.~~

3-A Accepted Practices, Method of Producing Steam of Culinary Quality, Number 609-02, 3-A Sanitary Standards, Inc.

3-A Sanitary Standards, Multiple-Use Rubber and Rubber-Like Materials Used as Product Contact Surfaces in Dairy Equipment, Number 18-03, 3-A Sanitary Standards, Inc.

3-A Sanitary Standards, Multiple-Use Plastic Materials Used as Product Contact Surfaces for Dairy Equipment, Number 20-21, 3-A Sanitary Standards, Inc.

3-A Accepted Practices, Permanently Installed Product and Solution Pipelines and Cleaning Systems Used in Milk and Milk Product Processing Plants, Number 605-04, 3-A Sanitary Standards, Inc.

3-A Accepted Practices, Sanitary Construction, Installation, Testing, and Operation of High Temperature Short-Time and Higher-Heat Shorter-Time Pasteurizer Systems, Number 603-06, 3-A Sanitary Standards, Inc.

3-A Sanitary Standards, Non-Coiled Type Batch Pasteurizers for Milk and Milk Products, Number 24-02, 3-A Sanitary Standards, Inc.

VA.R. Doc. No. R08-1067; Filed April 1, 2008, 10:38 a.m.

PESTICIDE CONTROL BOARD

Fast-Track Regulation

Title of Regulation: 2VAC20-20. Rules and Regulations for Enforcement of the Virginia Pesticide Law (amending 2VAC20-20-70, 2VAC20-20-130, 2VAC20-20-210).

Statutory Authority: §3.1-249.30 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until May 28, 2008.

Effective Date: June 12, 2008.

Agency Contact: Kathy Dictor, Program Supervisor, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-0685, FAX (804) 786-9149, (800) 828-1120/TTY, or email kathleen.dictor@vdacs.virginia.gov.

Basis: Section 3.1-249.30 of the Code of Virginia authorizes the Virginia Pesticide Control Board to promulgate regulations as may be necessary to carry out the provisions of the Virginia Pesticide Control Act.

Purpose: The proposed amendments are required to correctly cite the name and address of the Office of Pesticide Services, to delete references to repealed sections of the Code of Virginia, and to update the revision date of a form cited in the regulation.

Rationale for Using Fast-Track Process: These amendments make no substantive changes to the regulation, but only update names, addresses, and dates, and remove references to repealed sections of the Code of Virginia.

Substance: There are no new substantive provisions.

Issues: The primary advantage with updating the agency address is to ensure that citizens can more easily contact the agency in case of questions or concerns. Updating references to the correct section of the Code of Virginia will reduce confusion and accurately identify the appropriate point of reference in case of questions. It would be a great disadvantage to the agency if we did not update this information. It could pose obstacles to citizens trying to contact the agency or research sections in the Code of Virginia referenced in the regulation.

Summary:

The amendments update an address and a form date as well as delete references to repealed sections of the Code of Virginia.

2VAC20-20-70. Registration.

A. Eligibility. Any manufacturer, packer, seller, distributor, or shipper of a pesticide is eligible as a registrant and may register the pesticide.

B. Procedure for registration. Application for registration should be made on the form provided. Application forms will be furnished upon request to the Virginia Department of Agriculture and Consumer Services, Office of Pesticide Management Services, Post Office Box 1163, Richmond, Virginia ~~23209~~ 23218. Application should be submitted as far in advance as possible, before the time registration is desired to take effect.

C. Effective date of registration. Registration of a pesticide shall become effective on the date the certificate of registration is issued.

D. Responsibility of a registrant. The registrant is responsible for the accuracy and completeness of all information submitted in connection with his application for registration of a pesticide.

E. Changes in labeling or formula.

1. Changes in the labeling, or formula of a registered pesticide, shall be submitted in advance to the Office of Pesticide Management. The registrant shall describe the exact changes desired and the proposed effective date; and upon request, shall submit a description of tests which justify such changes.

2. After the effective date of a change in labeling or formula, the product shall be marketed only under the new label or formula, except that a reasonable time may be permitted by the commissioner to dispose of properly labeled stocks of old products.

F. Claims shall conform to registration. Claims made for a pesticide shall not differ in substance from representations made in connection with registration, including representations with respect to effectiveness, ingredients, directions for use, or pests against which the product is recommended.

2VAC20-20-130. Exemption.

Any pesticide specified in 2VAC20-20-80 of this chapter which is intended solely for use by a textile manufacturer or commercial laundry, cleaner, or dyer as a mothproofing agent, or used in the manufacture or processing of rubber, glue or leather goods, which would not be suitable for such use if colored and which will not come into the hands of the public except when incorporated into a fabric and will not be present in these finished goods in sufficient quantities to cause injury to any person, shall be exempt from the requirements of ~~§3.1-233(4) (Repealed) of the Code of Virginia, and~~ 2VAC20-20-80 of this chapter.

2VAC20-20-210. Service container labeling.

Containers other than the original registrant's or manufacturer's containers (~~§3.1-233(2) (Repealed) of the Code of Virginia notwithstanding~~) used for the temporary storage or transportation of pesticide concentrates or end-use dilutions, shall bear abbreviated labeling as elaborated below:

PESTICIDE CONCENTRATE

A. If the pesticide to be temporarily stored or transported is a concentrate to be further diluted, the container shall bear a securely attached label with the following information:

1. Product name (brand names from product label);
2. EPA registration number (from product label);
3. Name and percentage of active ingredient(s) from the product label; and
4. Appropriate signal word; i.e., Poison, Danger, Warning, Caution (from product label).

B. The above labeling is required for concentrate service containers, regardless of container type, size, or capacity.

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PESTICIDE END-USE DILUTIONS OR END-USE CONCENTRATES

A. If the pesticide to be temporarily stored or transported is to be applied without further dilution, the container shall bear a securely attached label with the following information:

1. Product name (brand name from product label) preceded by the word "Diluted" or "End-Use Concentrate";
2. EPA registration number from concentrate product label;
3. Name of active ingredient(s) and percentage(s) of end-use dilution; and
4. Appropriate signal word: i.e., Poison, Danger, Warning, Caution (from product label).

B. Abbreviated labeling is not required for the following:

1. End-use dilution containers not exceeding three gallons liquid or three pounds dry capacity, when such containers are used as application devices; i.e., hand-held sprayers, dusters, puffers, etc.
2. Containers used by farm supply dealers for the temporary storage or transportation of pesticide concentrate or end-use dilutions, provided that sales invoices or delivery tickets adequately identifying the pesticide(s) accompany each shipment or delivery.
3. On farm concentrate or end-use dilution containers or application equipment used for the temporary storage or transportation of such pesticides for agricultural use.
4. Aircraft-mounted containers used for temporary storage or transportation of concentrate or end-use dilution pesticides, provided that aircraft logs or other documents adequately identifying the pesticide(s) accompany the aircraft.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Application for Pesticide Product Registration Form, ~~Form~~ VDACS-07208, ~~eff. 10/94~~ rev. 09/06.

VA.R. Doc. No. R08-1070; Filed April 9, 2008, 11:30 a.m.

Fast-Track Regulation

Title of Regulation: 2VAC20-40. Regulations Governing Licensing of Pesticide Businesses Operating Under Authority of the Virginia Pesticide Control Act (amending 2VAC20-40-50).

Statutory Authority: §§3.1-249.30, 3.1-249.46, 3.1-249.49, and 3.1-249.50 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until May 28, 2008.

Effective Date: June 12, 2008.

Agency Contact: Kathy Dictor, Program Supervisor, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-0685, FAX (804) 786-9149, (800) 828-1120/TTY, or email kathleen.dictor@vdacs.virginia.gov.

Basis: Section 3.1-249.30 of the Code of Virginia provides the authority for the Virginia Pesticide Control Board to promulgate regulations as may be necessary to carry out the purposes of the Virginia Pesticide Control Law. Section 3.1-249.48 of the Code of Virginia authorizes the board to establish requirements for the maintenance of records of licensed pesticide businesses.

Purpose: The proposed amendment will allow licensed pesticide businesses to submit requested records to the agency through electronic means, providing them with greater flexibility in the method by which records are submitted.

Rationale for Using Fast-Track Process: The proposed amendment will allow licensed pesticide businesses to submit requested records to the agency through electronic means, providing them with greater flexibility in the method by which records are submitted. It will not create any additional burden on the businesses. The proposed change is at the request of the Office of the Attorney General and is noncontroversial.

Substance: There appears to be no substantive change to the existing section, since the existing regulation did not specify any particular means by which records were required to be submitted or made available for inspection.

Issues: The proposed change makes it clear that licensed pesticides businesses may submit requested records to the agency through electronic means, providing them with greater flexibility in the method by which records are submitted. It will not create any additional burden on the businesses. The proposed change is at the request of the Office of the Attorney General and should provide no disadvantages to the public or the Commonwealth.

Summary:

The amendment allows licensed pesticide businesses to submit requested records electronically.

2VAC20-40-50. General recordkeeping requirements.

A. Records covered in this chapter shall, upon written request, be made available for inspection by the commissioner or his designee during normal business hours. Records not readily available shall be submitted to the commissioner within 72 hours if so requested in writing. Records may be submitted electronically in a manner specified by VDACS, including, but not limited to, electronic mail or by completing any forms provided online by VDACS.

B. Persons possessing records covered in this part (2VAC20-40-50 et seq.) shall fully comply with the requirements contained in the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC §136 F) and regulations pursuant thereto.

C. Pesticide businesses shall maintain for a period of two years all records required by this chapter.

VA.R. Doc. No. R08-1071; Filed April 9, 2008, 11:28 a.m.



TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF CONSERVATION AND RECREATION

Final Regulation

REGISTRAR'S NOTICE: The Department of Conservation and Recreation is claiming 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 where no agency discretion is involved. The Department of Conservation and Recreation will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **4VAC5-50. Flood Prevention and Protection Assistance Fund (repealing 4VAC5-50-10 through 4VAC5-50-170).**

Statutory Authority: §10.1-603.18 of the Code of Virginia.

Effective Date: May 28, 2008.

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 repeals 4VAC5-50-10 through 4VAC5-50-170, the Flood Prevention and Protection Assistance Fund regulations. These regulations had existed to ensure the proper administration of the Fund through the establishment of policies, criteria, conditions, and procedures for awarding loans and grants from the Fund to local public bodies. At the time of their enactment, the Fund was authorized to make loans and grants to any local public body for the purpose of assisting the local public body in the development and implementation of flood prevention or protection projects, or for flood prevention or protection studies. The Director of the Department of Conservation and Recreation was authorized to adopt the regulations by the then-effective version of §10.1-603.18 of the Code of Virginia.

Chapters 648 and 765 of the 2006 Acts of Assembly re-titled the Fund the "Dam Safety, Flood Prevention and Protection Assistance Fund" and substantially rewrote the Code sections applicable to it. The Fund is now administered by the Virginia Resources Authority in cooperation with the Department of Conservation and Recreation, and is authorized to make loans and grants to local governments for dam repairs, locally administered dam rehabilitation programs, dam break inundation zone mapping, floodplain studies, and floodplain projects. The Fund is also authorized to make loans to private individuals and entities for dam repair projects. As set forth by §10.1-603.18 of the Code of Virginia, project eligibility and priority criteria for the Fund are contained within a guidance document developed by the Director of the Department of Conservation and Recreation and approved by the Virginia Soil and Water Conservation Board. The director's authority to adopt regulations governing the Fund has been removed.

VA.R. Doc. No. R08-1249; Filed April 4, 2008, 2:06 p.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Fast-Track Regulation

Title of Regulation: **4VAC25-150. Virginia Gas and Oil Regulation (amending 4VAC25-150-90).**

Statutory Authority: §§45.1-161.3 and 45.1-361.27 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until May 28, 2008.

Effective Date: June 12, 2008.

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Agency Contact: David Spears, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 N. Ninth St., 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email david.spears@dmme.virginia.gov.

Basis: The Department of Mines, Minerals and Energy (DMME) has authority to promulgate this regulation under §45.1-161.3 of the Code of Virginia, Powers of the Department, and §45.1-361.27 of the Code of Virginia, Duties, Responsibilities and Authority of the Director.

Section 45.1-161.3 of the Code of Virginia empowers DMME, with the approval of the director, to promulgate regulations necessary or incidental to the performance of duties or execution of powers under Title 45.1 of the Code of Virginia. Section 45.1-361.27 of the Code of Virginia empowers the director to promulgate and enforce rules, regulations and orders necessary to ensure the safe and efficient development and production of gas and oil resources located in the Commonwealth.

Purpose: The Department of Mines, Minerals and Energy is amending 4VAC25-150, Virginia Gas and Oil Regulation. The amendment will allow acceptance of permit applications using the Virginia Coordinate System of 1983, instead of requiring the use of the 1927 Virginia Coordinate System, as specified in the existing regulation. Current industry practice is to use the more modern 1983 coordinate system for describing the locations of wells and core holes. Applicants for permits under this chapter must currently convert their coordinates back to the 1927 system, as required by the regulation, in order to submit them to the Department of Mines, Minerals and Energy's Division of Gas & Oil. The amendment will allow applicants to use the updated 1983 coordinate system.

The 1983 coordinate system was established by the National Ocean Survey/National Geodetic Survey. It is an acceptable Virginia Coordinate System under §55-287 of the Code of Virginia. Acceptance of the 1983 coordinate system for permits issued under this chapter would reduce the extra workload applicants currently face in being required to convert their coordinates to an outdated system. This amendment brings the Virginia Gas and Oil Regulation into alignment with current surveying and mapping practices.

Rationale for Using Fast-Track Process: This amendment is expected to be noncontroversial because many parties applying for permits under the Virginia Gas and Oil Regulation have requested that the department update its requirements for the submission of coordinates. Furthermore, the regulation change will reduce workload and increase efficiency for applicants. It will have no negative impact on DMME's regulatory process.

Substance: This action amends one section of 4VAC25-150, Virginia Gas and Oil Regulation. The amended subdivision is

4VAC25-150-90 D 2, which describes the requirements for showing the horizontal location of a well or core hole on a plat submitted with a permit application. Currently, the subdivision states that the well or core hole location shall be shown in accordance the Virginia Coordinate System of 1927. The amendment changes this requirement to state that the location shall be shown in accordance with the Virginia Coordinate System of 1983. Virginia coordinate systems are defined in §55-287 of the Code of Virginia.

Issues: The subject amendment is expected to be advantageous to applicants for permits for gas and oil operations under 4VAC25-150. It will allow them to submit locations for their operations in a coordinate system that they are already using, rather than having to convert the locations to an outdated coordinate system just to meet the requirements of the regulation. It will reduce their workload and increase their efficiency. In making this amendment, no disadvantages to the Commonwealth, the agency, or the public are foreseen.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Mines, Minerals and Energy (Department) proposes to require that permit applications for a well or core hole use the Virginia Coordinate System of 1983. The current regulations require the use of the Virginia Coordinate System of 1927.

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

Estimated Economic Impact. As far as Department staff know, all affected firms currently use the 1983 coordinate system and have to convert to the 1927 system for the permit applications associated with these regulations. The process of converting each well or core hole location datum takes approximately five minutes.¹ If the requirement is switched from the 1927 system to the 1983 system, then firms will have about 5 minutes of their time saved for each well or core hole location datum.

According to the Department the 1983 coordinate system is more accurate and the Department already uses the 1983 system for other purposes. In addition to time saving for firms and improved accuracy of data, having a consistent coordinate system in the Department database is beneficial as well. There are no apparent costs associated with requiring the use of the 1983 coordinate system rather than the 1927 system. Thus, the proposal clearly produces a net benefit.

Businesses and Entities Affected. According to the Department there are approximately 25 firms with gas and oil operations that are affected by these regulations. At least 20 of these firms meet the small business criteria.

Localities Particularly Affected. The Counties of Buchanan, Dickenson, Lee, Tazewell, and Wise are particularly affected by these regulations.²

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

Effects on the Use and Value of Private Property. The proposed amendment will save firms a small amount of time, but will not significantly affect the value of private property.

Small Businesses: Costs and Other Effects. The proposed amendment saves affected small businesses a small amount of time, and in no way increases costs.

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

Real Estate Development Costs. The proposed amendment saves firms a small amount of time in developing real estate for gas and oil development purposes, and in no way increases costs.

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.

¹ Source: Department of Mines, Minerals and Energy

² Ibid

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Mines, Minerals and Energy concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

The amendment allows acceptance of permit applications using the Virginia Coordinate System of 1983, instead of requiring the use of the 1927 Virginia Coordinate System, as specified in the existing regulation. Current industry practice is to use the more modern 1983 coordinate system for describing the locations of wells and core holes. Applicants for permits under this chapter must currently convert their coordinates back to the 1927 system, as required by the regulation, in order to submit them to the Department of Mines, Minerals and Energy's Division of Gas & Oil. The amendment allows applicants to use the updated 1983 coordinate system.

4VAC25-150-90. Plats.

A. When filing an application for a permit for a well or corehole, the applicant also shall file an accurate plat certified by a licensed professional engineer or licensed land surveyor on a scale, to be stated thereon, of 1 inch equals 400 feet (1:4800). The scope of the plat shall be large enough to show all areas within the greater of 750 feet or one half of the distance specified in §45.1-361.17 of the Code of Virginia from the proposed well or corehole, or within a unit established by the board for the subject well. The plat shall be submitted on a form prescribed by the director.

B. The known courses and distances of all property lines and lines connecting the permanent points, landmarks or corners within the scope of the plat shall be shown thereon. All lines actually surveyed shall be shown as solid lines. Lines taken from deed descriptions only shall be shown by broken lines.

C. A north and south line shall be given and shown on the plat, and point to the top of the plat.

D. Wells or coreholes shall be located on the plat as follows:

1. The proposed or actual surface elevation of the subject well or corehole shall be shown on the plat, within an accuracy of one vertical foot. The surface elevation shall be tied to either a government benchmark or other point of proven elevation by differential or aerial survey or by trigonometric leveling. The location of the government benchmark or the point of proven elevation and the method used to determine the surface elevation of the subject well or corehole shall be noted and described on the plat.

2. The proposed or actual horizontal location of the subject well or corehole determined by survey shall be shown on the plat. The proposed or actual well or corehole location shall be shown in accordance with the Virginia Coordinate System of ~~1927~~ 1983, as defined in Chapter 17 (§55-287 et seq.) of Title 55 of the Code of Virginia, also known as the State Plane Coordinate System.

3. The courses and distances of the well or corehole location from two permanent points or landmarks on the

Regulations

tract shall be shown; such landmarks shall be set stones, iron pipes, T-rails or other manufactured monuments, including mine coordinate monuments, and operating or abandoned wells which are platted to the accuracy standards of this section and on file with the division. If temporary points are to be used to locate the actual well or corehole location as provided for in 4VAC25-150-290, the courses and distances of the well or corehole location from the two temporary points shall be shown.

4. Any other well, permitted or drilled, within the distance specified in §45.1-361.17 of the Code of Virginia or the distance to the nearest well completed in the same pool, whichever is less, or within the boundaries of a drilling unit established by the board around the subject well shall be shown on the plat or located by notation. The type of each well shall be designated by the following symbols:

- | | |
|--|---------------|
| a. New drilling location | ○ |
| b. Canceled application or permit | ○ CNC |
| c. Oil well | ● |
| d. Gas well other than CBM | ☼ |
| e. Dry hole | ⊠ |
| f. Enhanced oil recovery injection well | ∅ LI |
| g. Waste disposal well | ∅ WD |
| h. Underground gas storage well | ☼ GS |
| i. Abandoned well | ● ☼ ∅ LI ∅ WD |
| j. New coalbed methane drilling location | ○ CBM |
| k. Coalbed methane gas well | ☼ CBM |
| l. Abandoned coalbed methane gas well | ☼ CBM |

E. Plats shall also contain:

1. For a conventional gas and oil or injection well, the information required in 4VAC25-150-510;
2. For a coalbed methane gas well, the information required in 4VAC25-150-590; or
3. For a corehole, the information required in 4VAC25-150-680.

F. Any subsequent application for a new permit or permit modification shall include an accurate copy of the well plat, updated as necessary to reflect any changes on the site, newly discovered data or additional data required since the last plat was submitted. Any revised plat shall be certified as required in subsection A of this section.

VA.R. Doc. No. R08-1194; Filed April 4, 2008, 3:00 p.m.



TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Proposed Regulation

Titles of Regulations: **8VAC20-80. Regulations Governing Special Education Programs for Children with Disabilities in Virginia (repealing 8VAC20-80-10 through 8VAC20-80-190).**

8VAC20-81. Regulations Governing Special Education Programs for Children with Disabilities in Virginia (adding 8VAC20-81-10 through 8VAC20-81-340).

Statutory Authority: §§22.1-16 and 22.1-214 of the Code of Virginia; 20 USC §1400 et seq.; 34 CFR Part 300.

Public Hearing Information:

May 12, 2008 - 6:30 p.m. - Halifax County High School, 310 High School Circle, South Boston, VA

May 13, 2008 - 6:30 p.m. - Abingdon High School, 705 Thompson Drive, Abingdon, VA

May 14, 2008 - 6:30 p.m. - Hidden Valley High School, 5000 Titan Trail, Roanoke, VA

May 27, 2008 - 6:30 p.m. - Clover Hill High School, 13900 Hull Street Road, Midlothian, VA

May 28, 2008 - 6:30 p.m. - Norview High School, 6501 Chesapeake Blvd., Norfolk, VA

June 2, 2008 - 6:30 p.m. - Oakton High School, 2900 Sutton Road, Vienna, VA

June 3, 2008 - 6:30 p.m. - Essex High School, 833 High School Circle, Tappahannock, VA

June 4, 2008 - 6:30 p.m. - Martin Luther King, Jr. Performing Arts Center, 1400 Melbourne Road, Charlottesville, VA

Public Comments: Public comments may be submitted until 5 p.m. on June 30, 2008.

Agency Contact: Melissa Smith, Coordinator of Administrative Services, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 371-0524, or email melissa.smith@doe.virginia.gov.

Basis: Section 22.1-214 of the Code of Virginia requires the Board of Education to "prepare and supervise the implementation by each school division of a program of special education designed to educate and train children with disabilities" between the ages of two and 21, inclusive. The program developed by the Board of Education must "be designed to ensure that all children with disabilities have available to them a free and appropriate education." Section 22.1-16 of the Code of Virginia authorizes the Board of

Education to "promulgate such regulations as may be necessary to carry out its powers and duties...."

When implementing a program of special education services, Virginia must comply with the federal requirements outlined in the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), and its federal implementing regulations, at 34 CFR Part 300, to continue to be eligible for federal special education funding. In 2007-2008, Virginia expects to receive \$273.1 million in federal special education funding.

Purpose: The revision of these regulations is essential to protect the health, safety, and welfare of students with disabilities in Virginia. By ensuring that Virginia's state special education regulations are aligned with federal requirements, VDOE will ensure that students with disabilities in the Commonwealth have available a free appropriate public education and are afforded the procedural safeguards guaranteed by federal law.

The revision process will also strive to ensure consistency by incorporating requirements of the Code of Virginia and other regulations that apply to the provision of special education in Virginia, and strive to clarify areas of ambiguity from the previous set of regulations.

Finally, the revision of the state special education regulations is required to ensure compliance with the IDEA 2004, and with its federal implementing regulations, at 34 CFR Part 300, effective October 13, 2006. Alignment with these federal mandates will ensure that students with disabilities in Virginia may continue to benefit from federal special education funding, which will total approximately \$273.1 million in 2007-2008.

Substance: To clarify existing areas of ambiguity and to ensure compliance with the federal requirements outlined in IDEA 2004, and its federal implementing regulations, the current regulations (8VAC20-80) are being repealed and concurrently replaced with new regulations (8VAC20-81). Substantive new changes are proposed for the following areas: (i) functions of the Virginia Department of Education; (ii) referral for evaluation; (iii) eligibility determinations; (iv) the development, review and revision of a student's individualized education program (IEP); (v) parentally placed private school students; (vi) discipline; (vii) procedural safeguards, including the appointment of surrogate parents and dispute resolution; (viii) local educational agency administration and governance; (ix) funding; and (x) the requirements regarding highly qualified personnel.

Issues: The proposed revisions to the state regulations governing special education are advantageous to the public, the agency and the Commonwealth in that the proposed revisions ensure compliance with changes in federal and state laws and regulations, which impact the provision of special education and related services in Virginia. Compliance with

new federal mandates, as outlined in IDEA 2004 and its federal implementing regulations, will ensure Virginia's continued eligibility for federal special education funding. In 2007-2008, federal funding will provide approximately \$242.3 million in direct funding to local school divisions to support special education programs, and provide an additional \$30 million to support training and technical assistance efforts to local school divisions, and funding for compliance and monitoring activities. In addition, the proposed revisions will ensure that students with disabilities have available a free appropriate public education (FAPE) and are afforded the procedural protections guaranteed by federal law. Finally, the proposed changes incorporate recommendations to improve the state regulations governing special education, clarifying previous areas of ambiguity.

There are no identifiable disadvantages to the general public, the agency, or the Commonwealth for revising these regulations.

Public Participation: In addition to any other comments, the Virginia Board of Education is seeking comments on the following:

1. The costs and benefits of the proposal and the potential impacts of this regulatory proposal. Information may include (i) projected reporting, recordkeeping and other administrative costs, and (ii) a description of less intrusive or costly alternative methods of achieving the purpose of the regulation; and
2. Benefits and concerns of the new eligibility criteria proposed in 8VAC20-81-80, including any recommended changes or deletions to those provisions.

Anyone wishing to submit written comments may do so by mail to Melissa C. P. Smith, Coordinator of Administrative Services, Office of Dispute Resolution and Administrative Services, Virginia Department of Education, P.O. Box 2120, Richmond, Virginia 23218-2120; by fax at 804-786-8520, attention: "Regulations Revision Process"; or by email at revisespedregs@doe.virginia.gov. Staff may be contacted by telephone at 804-225-2013. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

Public hearings will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall Web site (www.townhall.virginia.gov) and can be found at the beginning of this proposal. Notice of the public hearings will also be posted on the regulations website, <http://www.doe.virginia.gov/VDOE/duproc/regulationsCW> D.html, and as required by the Virginia Department of Education. Both oral and written comments may be submitted at that time.

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The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Education (Board) proposes numerous changes to the Regulations Governing Special Education Programs for Children with Disabilities in Virginia, including: 1) repealing multiple requirements and timelines regarding Child Study Committees, 2) establishing uniform for criteria special education eligibility, 3) repealing the requirement for parental consent to end special education services, 4) requiring that secondary transition services be provided to children with disabilities starting at age fourteen, 5) switching responsibility for due process staffing from the Virginia Supreme Court to the Virginia Department of Education (VDOE), 6) amending composition requirements for local advisory committees, and 7) eliminating the requirement that short-term objectives be part of Individualized Education Programs (IEP).

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

Estimated Economic Impact. Since these regulations were last amended approximately eight years ago, federal special education law has changed. Many of the proposed changes to the Regulations Governing Special Education Programs for Children with Disabilities in Virginia by the Board are for the purpose of reflecting current federal law and guidance from the U.S. Department of Education Office of Special Education Programs (OSEP). As federal law has changed and OSEP has issued guidance, VDOE has informed local school divisions of the applicable changes in requirements. The Commonwealth receives federal funding for special education which is passed on to local school divisions. This funding is at risk if federal law and OSEP guidance is not followed. Thus the proposed amendments to these regulations which reflect current federal law and guidance from OSEP do not in practice cause change in special education requirements.

The Board does propose numerous amendments which do not merely reflect current federal law and guidance from OSEP. The following are proposed amendments which unambiguously produce net benefit for the Commonwealth: 1) repealing multiple requirements and timelines regarding Child Study Committees, 2) switching responsibility for due process staffing from the Virginia Supreme Court to VDOE, 3) requiring that local school divisions' programs for early childhood special education just provide a schedule comparable in length to school age students rather than exactly a 5-1/2 hour day, 4) accepting an additional reputable credential source for interpreters hired by school divisions for deaf students, 5) replacing specific provisions which outlined how local school divisions were required to conduct their

annual special education public awareness campaign with a single provision which requires that each local school division have procedures to document its public awareness campaign, 6) replacing the required timelines associated with screenings, and the requirement that specific measures or instruments be used during screenings with a single provision which requires each school division to have screening procedures, which include timelines, to document that children are screened in accordance with the requirements of the Code of Virginia and other state regulations, 7) adding a provision that the parent and the eligibility group may agree in writing to extend the 65 day timeline to obtain additional data for any eligibility determination, 8) amending language so that if the eligibility group determines that there is not a change in eligibility and educational needs, the IEP team is not required to convene unless the parent requests it, 9) requiring that local school divisions provide relevant parents information on dispute resolution options, 10) adding language that insures that if a child with a disability is placed in a private residential school under the Comprehensive Services Act (CSA) and his parents move from one Virginia school district to another, that there is no lapse in service and payments due to the transition, 11) repealing the requirement that school divisions and the Virginia schools (Virginia School for the Deaf and the Blind at Staunton or the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton) develop contractual agreements to ensure compliance with the federal and state special education requirements, 12) specifying that special education hearing officers may not require parties to submit briefs as a condition of rendering a decision, but that the special education hearing officer may permit such a submission on the parties' request, 13) no longer requiring school divisions to develop and submit an implementation plan following the rendering of a due process decision or the withdrawal of a hearing request, 14) repealing the requirement that a surrogate parent reside in the same general geographic area as the child, 15) permitting school division staff to serve on local advisory committees while still requiring that the majority of the committee be parents of children with disabilities or individuals with disabilities and 16) no longer requiring school divisions to submit copies of their policies and procedures, or the revision of those policies and procedures to VDOE for approval.

The following amendments proposed by the Board produce both benefits and costs: 1) limiting the provisions which previously permitted waiver of the qualifications for interpreters hired by school divisions for deaf students, 2) changing the timeline for the completion of a special education evaluation to be triggered by the receipt of parent consent rather than the receipt of the referral for evaluation by the Director of Special Education or his designee, 3) establishing uniform criteria for special education eligibility, 4) repealing the requirement for parental consent to end special education services, 5) requiring that secondary transition services be provided to children with disabilities

starting at age fourteen, 6) eliminating the requirement that short-term objectives be part of IEP, and 7) requiring that local advisory committees include representation of gender and the ethnic population of the local school division.

According to the Department there have been instances where waivers have been used to employ individuals not fully capable in sign language to act as interpreters for hearing-impaired students. Consequently the Board proposes to limit the provision that permits such waivers. Some school divisions already have difficulty finding interpreters. This proposed amendment would further tighten the supply of candidates for these positions. The proposed amendment is beneficial in that hearing-impaired students will likely have fully competent interpreters more frequently. On the other hand, it will likely be more costly for some school divisions to meet the tighter standard.

Currently the 65-day timeline to complete qualification evaluation for special education services starts upon the receipt of the referral for evaluation by the Director of Special Education. The Board proposes to have the 65-day period officially start upon the receipt of parental consent rather than the receipt of the referral for evaluation. Since the evaluation cannot start until there is parental consent, in practice a long delay in receipt of parent consent can leave far less than 65 days to perform the evaluation. The proposed change will more consistently allow enough time to perform full evaluations. On the other hand, the proposal does introduce the risk of delay in starting beneficial services for some students who will qualify for special education services. This may happen either due to a gap in time between receipt of the referral for evaluation by the Director of Special Education or his designee and the subsequent request for parental consent, or due to a delay in response by the parents.

The Board proposes establishing uniform criteria for the following disabilities: autism, deafness, developmental delay, hearing impairment, mental retardation, other health impairment, speech or language impairment, and visual impairment. Currently each school division sets its own criteria for each of these disabilities. The uniform criteria would be beneficial in that when students move between school divisions the new school division would not necessarily need to spend the time and resources to conduct a new evaluation knowing that the previous school division used the same criteria. The student would potentially be able to start receiving appropriate services sooner. The Department believes that statewide the proposed uniform criteria will not significantly increase or decrease the number of students who qualify for services for each disability. There are no clear costs to the proposed establishment of uniform criteria beyond some lost freedom for establishing criteria by the local school divisions; but if some school divisions did have criteria that somehow maximized net benefits to the students and the public better than the proposed uniform

criteria, then there would be cost within those divisions from the requirement to conform to the uniform criteria.

Under current regulations parental consent must be given to end special education services. The Board proposes to allow school divisions to end special education services for individual students when they no longer qualify by the established criteria. This will allow school divisions to save time and resources spent "inappropriately," and may in fact benefit affected students by having them receive more appropriate education. On the other hand, the proposal will take away a specific parental right.

The current regulations require that secondary transition services be provided to children with disabilities starting at age fourteen. This same requirement existed in Federal law when these regulations were last amended approximately eight years ago. Since then Federal law was changed to only require that secondary transition services be provided to children with disabilities starting at age sixteen. Under the presumption that the earlier Board had intended to match Federal law when it set fourteen as the starting age for transition services, the Virginia Office of the Attorney General advised the Board and VDOE to consider the requirement for local school divisions to be that secondary transition services be provided to children with disabilities starting at age sixteen to match the new Federal law. VDOE consequently informed local school divisions that they were not required to provide transition services to 14-year old and 15-year-old students. The current Board has decided to require that transition services be provided to 14-year old and 15-year-old students as well to older special education students still in school. Thus, by choosing to not amend the current language that states that secondary transition services be provided to children with disabilities starting at age fourteen, the Board will in actuality change the requirement for local school divisions. There are likely significant benefits to providing transition services for special education students. Insufficient information is available to determine if those benefits exceed the costs of supplying those services to 14-year old and 15-year-old students. The Department surveyed five Virginia school divisions of varying sizes regions concerning the annual costs of providing transition services to 14-year old and 15-year-old students. The following are the estimated costs: \$20,000 for School Division A, \$3,000 for School Division B, \$60,000 for School Division C, \$20,000 for School Division D, and \$600,000 for School Division E.

The Board proposes to require that local advisory committees include representation of gender and the ethnic population of the local school division. It is beneficial to include the views and knowledge from all relevant parties involved, but it may be costly to require that time and effort be expended to include individuals who may not be interested in participating. This proposal would likely create greater net

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benefit if it were to require instead that a good faith effort be made to include representation of gender and the ethnic population of the local school division.

None of the proposed Board amendments to the regulations produce costs that clearly outweigh the benefits.

Businesses and Entities Affected. All 132 school divisions in the Commonwealth are affected by the proposed amendments. School staff and families involved in special education will be particularly affected.

Localities Particularly Affected. All localities are affected.

Projected Impact on Employment. Several proposed amendments would result in saved staff time for school divisions, for example repealing multiple requirements and timelines regarding Child Study Committees. Other proposed amendments would demand increased staff time, for example requiring that secondary transition services be provided to children with disabilities starting at age fourteen. Overall there will not likely be a large impact on total employment if all proposals are implemented.

Effects on the Use and Value of Private Property. The proposed amendments to these regulations are not likely to significantly affect the use and value of private property in the short run. To the extent that the quality of special education instruction is improved due to changes, there may be some positive impact on the value of property produced by former students in the long run.

Small Businesses: Costs and Other Effects. The proposed amendments do not directly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments do not directly affect small businesses.

Real Estate Development Costs. The proposed amendments do not directly affect real estate development costs.

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 agency agrees with the economic impact analysis done by Department of Planning and Budget. The agency will continue to examine the economic and administrative impact of the regulations as they progress through the Administrative Process Act process.

Summary:

The proposed action makes substantive changes to the Regulations Governing Special Education Programs for Children with Disabilities in Virginia. In a concurrent action, the Board of Education proposes to repeal the text of the current regulations (8VAC20-80) and promulgate new regulations (8VAC20-81). Substantive new changes are proposed for the following areas: (i) functions of the Virginia Department of Education (VDOE); (ii) referral for evaluation; (iii) eligibility determinations; (iv) the development, review and revision of a student's individualized education program (IEP); (v) parentally placed private school students; (vi) discipline; (vii) procedural safeguards, including the appointment of surrogate parents and dispute resolution; (viii) local educational agency administration and governance; (ix) funding; and (x) the requirements regarding highly qualified personnel.

CHAPTER 81

REGULATIONS GOVERNING SPECIAL EDUCATION PROGRAMS FOR CHILDREN WITH DISABILITIES IN VIRGINIA

Part I

Definitions

8VAC20-81-10. Definitions.

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

"Act" means the Individuals with Disabilities Education Improvement Act, P.L. 108-446, December 3, 2004, §1400 et seq. (34 CFR 300.4)

"Age of eligibility" means all eligible children with disabilities who have not graduated with a standard or advanced studies high school diploma who, because of such disabilities, are in need of special education and related services, and whose second birthday falls on or before

September 30, and who have not reached their 22nd birthday on or before September 30 (two to 21, inclusive) in accordance with the Code of Virginia. A child with a disability whose 22nd birthday is after September 30 remains eligible for the remainder of the school year. (§22.1-213 of the Code of Virginia; 34 CFR 300.101(a) and 34 CFR 300.102(a)(3)(i))

"Age of majority" means the age when the procedural safeguards and other rights afforded to the parent(s) of a student with a disability transfer to the student. In Virginia, the age of majority is 18. (§1-204 of the Code of Virginia; 34 CFR 300.520)

"Alternate assessment" means the state assessment program for measuring student performance against alternate achievement standards for students with significant cognitive disabilities who are unable to participate in statewide Standards of Learning testing, even with accommodations. (34 CFR 300.320(a)(2)(ii) and 34 CFR 300.704(b)(4)(x))

"Alternative assessment" means the state assessment program for measuring student performance on grade level standards for students with disabilities who are unable to participate in statewide Standards of Learning testing, even with accommodations.

"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of that device. (34 CFR 300.5)

"Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes: (34 CFR 300.6)

1. The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
5. Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

6. Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to employ or are otherwise substantially involved in the major life functions of that child.

"At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to students without disabilities or their parent(s) as part of the regular education program. (34 CFR 300.39(b)(1))

"Audiology" means services provided by a qualified audiologist licensed by the Board of Audiology and Speech-Language Pathology and includes: (Regulations Governing the Practice of Audiology and Speech-Language Pathology, 18VAC30-20; 34 CFR 300.34(c)(1))

1. Identification of children with hearing loss;
2. Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
3. Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;
4. Creation and administration of programs for prevention of hearing loss;
5. Counseling and guidance of children, parents, and teachers regarding hearing loss; and
6. Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

"Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance. A child who manifests the characteristics of autism after age three could be diagnosed as having autism if the criteria in this definition are satisfied. (34 CFR 300.8(c)(1))

"Behavioral intervention plan" means a plan that utilizes positive behavioral interventions and supports to address behaviors that interfere with the learning of students with disabilities or with the learning of others or behaviors that require disciplinary action.

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"Business day" means Monday through Friday, 12 months of the year, exclusive of federal and state holidays (unless holidays are specifically included in the designation of business days, as in 8VAC20-81-150 B 4 a (2) (34 CFR 300.11)

"Calendar days" means consecutive days, inclusive of Saturdays and Sundays. Whenever any period of time fixed by this chapter shall expire on a Saturday, Sunday, or federal or state holiday, the period of time for taking such action under this chapter shall be extended to the next day, not a Saturday, Sunday, or federal or state holiday. (34 CFR 300.11)

"Career and technical education" means organized educational activities that offer a sequence of courses that: (20 USC §2301 et seq.)

1. Provides individuals with the rigorous and challenging academic and technical knowledge and skills the individuals need to prepare for further education and for careers (other than careers requiring a master's or doctoral degree) in current or emerging employment sectors;

2. May include the provision of skills or courses necessary to enroll in a sequence of courses that meet the requirements of this subdivision; or

3. Provides, at the postsecondary level, for a one-year certificate, an associate degree, or industry-recognized credential and includes competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupational-specific skills.

"Caseload" means the number of students served by special education personnel.

"Change in identification" means a change in the categorical determination of the child's disability by the group that determines eligibility.

"Change in placement" or "change of placement" means when the local educational agency places the child in a setting that is distinguishable from the educational environment to which the child was previously assigned and includes: (34 CFR 300.102(a)(3)(iii), 34 CFR 300.532(b)(2)(ii) and 34 CFR 300.536)

1. The child's initial placement from general education to special education and related services;

2. The expulsion or long-term removal of a student with a disability;

3. The placement change that results from a change in the identification of a disability;

4. The change from a public school to a private day, residential, or state-operated program; from a private day,

residential, or state-operated program to a public school; or to a placement in a separate facility for educational purposes;

5. Termination of all special education and related services; or

6. Graduation with a standard or advanced studies high school diploma.

"Change in placement" or "change of placement," for the purposes of discipline, means: (34 CFR 300.536)

1. A removal of a student from the student's current educational placement is for more than 10 consecutive school days; or

2. The student is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as:

a. The length of each removal;

b. The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals;

c. The total amount of time the student is removed; or

d. The proximity of the removals to one another.

"Chapter" means these regulations.

"Charter schools" means any school meeting the requirements for charter as set forth in the Code of Virginia. (§§22.1-212.5 and 22.1-212.15 of the Code of Virginia; 34 CFR 300.7)

"Child" means any person who shall not have reached his 22nd birthday by September 30 of the current year.

"Child with a disability" means a child evaluated in accordance with the provisions of this chapter as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities who, by reason thereof, needs special education and related services. If it is determined through an appropriate evaluation that a child has one of the disabilities identified but only needs a related service and not special education, the child is not a child with a disability under this part. If the related service required by the child is considered special education rather than a related service under Virginia standards, the child would be determined to be a child with a disability. (§22.1-213 of the Code of Virginia; 34 CFR 300.8 (a)(1) and 34 CFR 300.8(a)(2)(i) and (ii)

"Cognitive disability" - see "Mental retardation."

"Collaboration" means interaction among professionals as they work toward a common goal. Teachers do not necessarily have to engage in coteaching in order to collaborate.

"Complaint" means a request that the Virginia Department of Education investigate an alleged violation by a local educational agency of a right of a parent(s) of a child who is eligible or suspected to be eligible for special education and related services based on federal and state law and regulations governing special education or a right of such child. A complaint is a statement of some disagreement with procedures or process regarding any matter relative to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education. (34 CFR 300.151)

"Comprehensive Services Act" (CSA) means the Comprehensive Services Act for At-Risk Youth and Families that establishes the collaborative administration and funding system that addresses and funds services for certain at-risk youths and their families. (Chapter 52 (§2.2-5200 et seq.) of Title 2.2 of the Code of Virginia)

"Consent" means: (34 CFR 300.9)

1. The parent(s) or eligible student has been fully informed of all information relevant to the activity for which consent is sought in the parent's(s') or eligible student's native language, or other mode of communication;
2. The parent(s) or eligible student understands and agrees, in writing, to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
3. The parent(s) or eligible student understands that the granting of consent is voluntary on the part of the parent(s) or eligible student and may be revoked any time.

If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked. Revocation ceases to be relevant after the activity for which consent was obtained was completed.).

The meaning of the term "consent" is not the same as the meaning of the term "agree" or "agreement." "Agree" or "agreement" refers to an understanding between the parent and the local educational agency about a particular matter and as required in this chapter. There is no requirement that an agreement be in writing, unless stated in this chapter. The local educational agency and parent(s) should document their agreement.

"Controlled substance" means a drug or other substance identified under schedules I, II, or III, IV, or V in §202(c) of

the Controlled Substances Act, 21 USC §812(c). (34 CFR 300.530(i)(1)(c))

"Core academic subjects" means English, reading or language arts, mathematics, science, foreign languages, civics, and government, economics, arts, history, and geography. (34 CFR 300.10)

"Correctional facility" means any state facility of the Virginia Department of Corrections or the Virginia Department of Juvenile Justice, any regional or local detention home, or any regional or local jail. (§§16.1-228 and 53.1-1 of the Code of Virginia)

"Coteaching" means a service delivery option with two or more professionals sharing responsibility for a group of students for some or all of the school day in order to combine their expertise to meet student needs.

"Counseling services" means services provided by qualified visiting teachers, social workers, psychologists, guidance counselors, or other qualified personnel. (34 CFR 300.34(c)(2); Licensure Regulations for School Personnel (8VAC20-22))

"Dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for or is readily capable of, causing death or bodily injury, except that such term does not include a pocket knife with a blade of less than 2-1/2 inches in length. (18 USC §930(g)(2))

"Day" means calendar day unless otherwise indicated as business day or school day. (34 CFR 300.11)

"Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects the child's educational performance. (34 CFR 300.8(c)(3))

"Deaf-blindness" means simultaneous hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness. (34 CFR 300.8(c)(2))

"Destruction of information" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable. (34 CFR 300.611(a))

"Developmental delay" means a disability affecting a child ages two by September 30 through five inclusive: (34 CFR 300.8(b))

1. (i) Who is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication

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development, social or emotional development, or adaptive development, or (ii) who has an established physical or mental condition that has a high probability of resulting in developmental delay;

2. The delay(s) is not primarily a result of cultural factors, environmental or economic disadvantage, or limited English proficiency; and

3. The presence of one or more documented characteristics of the delay has an adverse affect on educational performance and makes it necessary for the student to have specially designed instruction to access and make progress in the general educational activities for this age group.

"Direct services" means services provided to a child with a disability directly by the Virginia Department of Education, by contract, or through other arrangements. (34 CFR 300.175)

"Due process hearing" means an administrative procedure conducted by an impartial special education hearing officer to resolve disagreements regarding the identification, evaluation, educational placement and services, and the provision of a free appropriate public education that arise between a parent(s) and a local educational agency. A due process hearing involves the appointment of an impartial special education hearing officer who conducts the hearing, reviews evidence, and determines what is educationally appropriate for the child with a disability. (34 CFR 300.507(a))

"Early identification and assessment of disabilities in children" means the implementation of a formal plan for identifying a disability as early as possible in a child's life. (34 CFR 300.34(c)(3))

"Education record" means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. The term also has the same meaning as "scholastic record." In addition to written records, this also includes electronic exchanges between school personnel and parent(s) regarding matters associated with the child's educational program (e.g., scheduling of meetings or notices). This term also includes the type of records covered under the definition of "education record" in the regulations implementing the Family Education Rights and Privacy Act. (20 USC §1232g(a)(3); §22.1-289 of the Code of Virginia; 34 CFR 300.611(b))

"Educational placement" means the overall instructional setting in which the student receives his education including the special education and related services provided. Each local educational agency shall ensure that the parents of a child with a disability are members of the group that makes decisions on the educational placement of their child. (34 CFR 300.327)

"Educational service agencies and other public institutions or agencies" include: (34 CFR 300.12)

1. Regional public multiservice agencies authorized by state law to develop, manage, and provide services or programs to local educational agencies;

2. Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the state;

3. Any other public institution or agency having administrative control and direction over a public elementary school or secondary school; and

4. Entities that meet the definition of intermediate educational unit in §1402(23) of the Act as in effect prior to June 4, 1997.

"Eligible student" means a child with a disability who reaches the age of majority and to whom the procedural safeguards and other rights afforded to the parent(s) are transferred.

"Emotional disturbance" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: (34 CFR 300.8(c)(4))

1. An inability to learn that cannot be explained by intellectual, sensory, or health factors;

2. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

3. Inappropriate types of behavior or feelings under normal circumstances;

4. A general pervasive mood of unhappiness or depression;
or

5. A tendency to develop physical symptoms or fears associated with personal or school problems.

Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance as defined in this section.

"Equipment" means machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house machinery, utilities, or equipment and all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published and audio-visual instructional materials, telecommunications, sensory, and other technological aids and devices and books, periodicals, documents, and other related materials. (34 CFR 300.14)

"Evaluation" means procedures used in accordance with this chapter to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. (34 CFR 300.15)

"Excess costs" means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that shall be computed after deducting (34 CFR 300.16)

1. Amounts received:

- a. Under Part B of the Act;
- b. Under Part A of Title I of the ESEA; and
- c. Under Parts A and B of Title III of the ESEA and;

2. Any state or local funds expended for programs that would qualify for assistance under any of the parts described in subdivision 1 a of this definition, but excluding any amounts for capital outlay or debt service.

"Extended school year services" for the purposes of this chapter means special education and related services that: (34 CFR 300.106(b))

- 1. Are provided to a child with a disability:
 - a. Beyond the normal school year of the local educational agency;
 - b. In accordance with the child's individualized education program;
 - c. At no cost to the parent(s) of the child; and
- 2. Meet the standards established by the Virginia Department of Education.

"Federal core academic subjects" means English, reading or language arts, mathematics, science, foreign language (languages other than English), civics and government, economics, arts, history, and geography. (20 USC §7801(11))

"Federal financial assistance" means any grant, loan, contract or any other arrangement by which the U.S. Department of Education provides or otherwise makes available assistance in the form of funds, services of federal personnel, or real and personal property. (34 CFR 104.3(h))

"Free appropriate public education" or "FAPE" means special education and related services that: (34 CFR 300.17)

- 1. Are provided at public expense, under public supervision and direction, and without charge;
- 2. Meet the standards of the Virginia Board of Education;
- 3. Include preschool, elementary school, middle school or secondary school education in Virginia; and
- 4. Are provided in conformity with an individualized education program that meets the requirements of this chapter.

"Functional behavioral assessment" means a process to determine the underlying cause or functions of a child's

behavior that impede the learning of the child with a disability or the learning of the child's peers. A functional behavioral assessment may be a review of existing data.

"General curriculum" means the same curriculum used with children without disabilities adopted by a local educational agency, schools within the local educational agency or, where applicable, the Virginia Department of Education for all children from preschool through secondary school. The term relates to content of the curriculum and not to the setting in which it is taught.

"Hearing impairment" means an impairment in hearing in one or both ears, with or without amplification, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section. (34 CFR 300.8(c)(5))

"Highly qualified special education teacher" means a teacher has met the requirements as specified in 34 CFR 300.18 for special education teachers in general, for special education teachers teaching core academic subjects, for special education teachers teaching to alternate achievement standards, or for special education teachers teaching multiple subjects as it applies to their teaching assignment. (34 CFR 300.18)

"Home-based instruction" means services that are delivered in the home setting (or other agreed upon setting) in accordance with the child's individualized education program.

"Homebound instruction" means academic instruction provided to students who are confined at home or in a health care facility for periods that would prevent normal school attendance based upon certification of need by a licensed physician or licensed clinical psychologist. For a child with a disability, the IEP team shall determine the delivery of services, including the number of hours of services. (Regulations Establishing Standards for Accrediting Public Schools in Virginia, 8VAC20-131-180)

"Home instruction" means instruction of a child or children by a parent(s), guardian or other person having control or charge of such child or children as an alternative to attendance in a public or private school in accordance with the provisions of the Code of Virginia. This instruction may also be termed home schooling. (§22.1-254.1 of the Code of Virginia)

"Homeless children" has the meaning given the term "homeless children and youth" in §725 (42 USC §11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 USC §11431 et seq. and listed below: (34 CFR 300.19)

The term "homeless children and youth" means individuals who lack a fixed, regular, and adequate nighttime residence within the meaning of §103(a)(1) of the McKinney-Vento Homeless Assistance Act and includes the following:

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1. Children and youth who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to a lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement.

2. Children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings within the meaning of §103(a)(2)(C);

3. Children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

4. Migratory children (as such term is defined in §1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless because the children are living in circumstances described in subdivisions 1 through 3 of this definition.

The term "unaccompanied youth" includes a youth not in the physical custody of a parent or guardian.

"Home tutoring" means instruction by a tutor or teacher with qualifications prescribed by the Virginia Board of Education, as an alternative to attendance in a public or private school and approved by the division superintendent in accordance with the provisions of the Code of Virginia. This tutoring is not home instruction as defined in the Code of Virginia. (§22.1-254 of the Code of Virginia)

"Illegal drug" means a controlled substance, but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act, 21 USC §812(c), or under any other provision of federal law. (34 CFR 300.530(i)(2))

"Independent educational evaluation" means an evaluation conducted by a qualified examiner or examiners who are not employed by the local educational agency responsible for the education of the child in question. (34 CFR 300.502 (a)(3)(i))

"Individualized education program" or "IEP" means a written statement for a child with a disability that is developed, reviewed, and revised in a team meeting in accordance with this chapter. The IEP specifies the individual educational needs of the child and what special education and related services are necessary to meet the child's educational needs. (34 CFR 300.22)

"Individualized education program team" means a group of individuals described in 8VAC20-81-110 that is responsible for developing, reviewing, or revising an IEP for a child with a disability. (34 CFR 300.23)

"Individualized family service plan (IFSP) under Part C of the Act means a written plan for providing early intervention services to an infant or toddler with a disability eligible under Part C and to the child's family. (34 CFR 303.24)

"Infant and toddler with a disability" means a child, ages birth to two, inclusive, whose birthday falls on or before September 30, or who is eligible to receive services in the Part C early intervention system up to age three, and who: (§22.1-213 of the Code of Virginia; 34 CFR 300.25)

1. Has delayed functioning;

2. Manifests atypical development or behavior;

3. Has behavioral disorders that interfere with acquisition of developmental skills; or

4. Has a diagnosed physical or mental condition that has a high probability of resulting in delay, even though no current delay exists.

"Informed parental consent": see "Consent."

"Initial placement" means the first placement for the child to receive special education and related services in either a local educational agency, other educational service agency, or other public agency or institution for the purpose of providing special education or related services.

"Intellectual disability" - see "Mental retardation."

"Interpreting services" as used with respect to children who are deaf or hard of hearing, means services provided by personnel who meet the qualifications set forth under 8VAC20-81-40 and includes oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell. (Regulations Governing Interpreter Services for the Deaf and Hard of Hearing 22VAC20-30; 34 CFR 300.34(c)(4)(i))

"Least restrictive environment" (LRE) means that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (34 CFR 300.114 through 34 CFR 300.120)

"Level I services" means the provision of special education to children with disabilities for less than 50% of their instructional school day (excluding intermission for meals). The time that a child receives special education services is calculated on the basis of special education services described

in the individualized education program, rather than the location of services.

"Level II services" means the provision of special education and related services to children with disabilities for 50% or more of the instructional school day (excluding intermission for meals). The time that a child receives special education services is calculated on the basis of special education services described in the individualized education program, rather than the location of services.

"Limited English proficient" when used with respect to an individual means an individual: (20 USC §7801(25); 34 CFR 300.27)

1. Who is aged 2 through 21;
2. Who is enrolled or preparing to enroll in an elementary school or secondary school;
3. Who:
 - a. Was not born in the United States or whose native language is a language other than English;
 - b. Is a Native American or Alaska Native, or a native resident of the outlying areas, and comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or
 - c. Is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
4. Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual:
 - a. The ability to meet Virginia's proficient level of achievement on Virginia's assessments;
 - b. The ability to successfully achieve in classrooms where the language of instruction is English; or
 - c. The opportunity to participate fully in society.

"Local educational agency" means a local school division governed by a local school board, a state-operated program that is funded and administered by the Commonwealth of Virginia or the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton (the Virginia schools). Neither state-operated programs nor the Virginia schools are considered a school division as that term is used in these regulations. (§22.1-346 C of the Code of Virginia; 34 CFR 300.28)

"Manifestation determination review" means a process to review all relevant information and the relationship between the child's disability and the behavior subject to the disciplinary action.

"Medical services" means services provided by a licensed physician or nurse practitioner to determine a child's medically related disability that results in the child's need for special education and related services. (§22.1-270 of the Code of Virginia; 34 CFR 300.34(c)(5))

"Mental retardation" means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance. (34 CFR 300.8(c)(6))

"Multiple disabilities" means simultaneous impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness. (34 CFR 300.8(c)(7))

"National Instructional Materials Access Center" or "NIMAC" means the national center established to do the following: (20 USC §1474(e)(1) and (e)(2))

1. Receive and maintain a catalog of print instructional materials prepared in the NIMAS, as established by the U.S. Secretary of Education, made available to such center by the textbook publishing industry, state educational agencies, and local educational agencies;
2. Provide access to print instructional materials, including textbooks, in accessible media, free of charge, to blind or other persons with print disabilities in elementary schools and secondary schools, in accordance with such terms and procedures as the NIMAC may prescribe; and
3. Develop, adopt and publish procedures to protect against copyright infringement, with respect to print instructional materials provided in accordance with the Act.

"National Instructional Materials Accessibility Standard" or "NIMAS" means the standard to be used in the preparation of electronic files suitable and used solely for efficient conversion of print instructional materials into specialized formats. (20 USC §1474(e)(3)(B))

"Native language" if used with reference to an individual of limited English proficiency, means the language normally used by that individual, or, in the case of a child, the language normally used by the parent(s) of the child, except in all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication). (34 CFR 300.29)

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"Nonacademic services and extracurricular services" may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the local educational agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the local educational agency and assistance in making outside employment available. (34 CFR 300.107(b))

"Notice" means written statements in English or in the primary language of the home of the parent(s), or, if the language or other mode of communication of the parent(s) is not a written language, oral communication in the primary language of the home of the parent(s). If an individual is deaf or blind, or has no written language, the mode of communication would be that normally used by the individual (such as sign language, Braille, or oral communication). (34 CFR 300.503(c))

"Occupational therapy" means services provided by a qualified occupational therapist or services provided under the direction or supervision of a qualified occupational therapist and includes: (Regulations Governing the Licensure of Occupational Therapists (18VAC85-80-10 et seq.); 34 CFR 300.34(c)(6))

1. Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
2. Improving ability to perform tasks for independent functioning if functions are impaired or lost; and
3. Preventing, through early intervention, initial or further impairment or loss of function.

"Orientation and mobility services" means services provided to blind or visually impaired children by qualified personnel to enable those children to attain systematic orientation to and safe movement within their environments in school, home, and community; and includes travel training instruction, and teaching children the following, as appropriate: (34 CFR 300.34(c)(7))

1. Spatial and environmental concepts and use of information received by the senses (e.g., sound, temperature, and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
2. To use the long cane or service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision; and
3. To understand and use remaining vision and distance low vision aids; and
4. Other concepts, techniques, and tools.

"Orthopedic impairment" means a severe orthopedic impairment. The term includes impairments caused by

congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures). (34 CFR 300.8(c)(8))

"Other health impairment" means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia and Tourette syndrome. (34 CFR 300.8(c)(9))

"Paraprofessional," also known as paraeducator, means an appropriately trained employee who assists and is supervised by qualified professional staff in meeting the requirements of this chapter. (34 CFR 300.156(b)(2)(iii))

"Parent" means: (§20-124.6 of the Code of Virginia; 34 CFR 99.4 and 34 CFR 300.30)

1. Persons who meet the definition of "parent":

a. A biological or adoptive parent of a child,

b. A foster parent:

(1) If the biological parent(s)' authority to make educational decisions on the child's behalf has been extinguished under §16.1-283, 16.1-277.01 or 16.1-277.02 of the Code of Virginia or a comparable law in another state;

(2) The child is in permanent foster care pursuant to Chapter 9 (§63.2-900 et seq.) of Title 63.2 of the Code of Virginia or comparable law in another state; and

(3) The foster parent has an ongoing, long-term parental relationship with the child, is willing to make the educational decisions required of the parent under this chapter, and has no interest that would conflict with the interests of the child.

c. A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not a guardian ad litem, or the state if the child is a ward of the state);

d. An individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

e. A surrogate parent who has been appointed in accordance with requirements detailed under 8VAC20-81-220.

2. If a judicial decree or order identifies a specific person(s) under subdivisions 1 a through 1 e of this subsection to act as the "parent" of a child or to make

educational decisions on behalf of a child, then such person(s) shall be determined to be the "parent" for purposes of this definition.

3. "Parent" does not include local or state agencies or their agents, including local departments of social services, even if the child is in the custody of such an agency.

4. The biological or adoptive parent, when attempting to act as the parent under this chapter and when more than one party is qualified under this section to act as a parent, shall be presumed to be the parent for purposes of this section unless the natural or adoptive parent does not have legal authority to make educational decisions for the child.

5. Noncustodial parents whose parental rights have not been terminated are entitled to all parent rights and responsibilities available under this chapter, including access to their child's records.

6. Custodial stepparents have the right to access the child's record. Noncustodial stepparents do not have the right to access the child's record.

"Parent counseling and training" means assisting parents in understanding the special needs of their child, providing parents with information about child development, and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP. (34 CFR 300.34(c)(8))

"Participating agency" means a state or local agency (including a Comprehensive Services Act team), other than the local educational agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student. The term also means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained under Part B of the Act. (34 CFR 300.611(c), 34 CFR 300.324(c) and 34 CFR 300.321(b)(3))

"Personally identifiable" means information that contains the following: (34 CFR 300.32)

1. The name of the child, the child's parent, or other family member;
2. The address of the child;
3. A personal identifier, such as the child's social security number or student number; or
4. A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

"Physical education" means the development of: (34 CFR 300.39(b)(2))

1. Physical and motor fitness;
2. Fundamental motor skills and patterns; and

3. Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports). The term includes special physical education, adapted physical education, movement education, and motor development.

"Physical therapy" means services provided by a qualified physical therapist or under the direction or supervision of a qualified physical therapist upon medical referral and direction. (Regulations Governing the Practice of Physical Therapy, 18VAC112-20; 34 CFR 300.34(c)(9))

"Private school children with disabilities" means children with disabilities enrolled by their parent(s) in private, including religious, schools or facilities that meet the definition of elementary school or secondary school as defined in this section other than children with disabilities who are placed in a private school by a local school division or a Comprehensive Services Act team in accordance with 8VAC20-81-150. (34 CFR 300.130)

"Program" means the special education and related services, including accommodations, modifications, supplementary aids and services, as determined by a child's individualized education program.

"Psychological services" means those services provided by a qualified psychologist or under the direction or supervision of a qualified psychologist, including: (34 CFR 300.34(c)(10))

1. Administering psychological and educational tests, and other assessment procedures;
2. Interpreting assessment results;
3. Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
4. Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations;
5. Planning and managing a program of psychological services, including psychological counseling for children and parents; and
6. Assisting in developing positive behavioral intervention strategies.

"Public expense" means that the local educational agency either pays for the full cost of the service or evaluation or ensures that the service or evaluation is otherwise provided at no cost to the parent(s). (34 CFR 300.502(a)(3)(ii))

"Public notice" means the process by which certain information is made available to the general public. Public notice procedures may include, but not be limited to, newspaper advertisements, radio announcements, television features and announcements, handbills, brochures, electronic

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means, and other methods that are likely to succeed in providing information to the public.

"Qualified person who has a disability" means a "qualified handicapped person" as defined in the federal regulations implementing the Rehabilitation Act of 1973, as amended. (29 USC §701 et seq.)

"Recreation" includes: (34 CFR 30.34(c)(11))

1. Assessment of leisure function;
2. Therapeutic recreation services;
3. Recreation program in schools and community agencies; and
4. Leisure education.

"Reevaluation" means completion of a new evaluation in accordance with this chapter. (34 CFR 300.303)

"Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973 (29 USC §701 et seq.), as amended. (34 CFR 300.34(c)(12))

"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education and includes speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; counseling services, including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluation purposes. Related services also includes school health services and school nurse services; social work services in schools; and parent counseling and training. Related services do not include a medical device that is surgically implanted including cochlear implants, the optimization of device functioning (e.g., mapping), maintenance of the device, or the replacement of that device. The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music and dance therapy), if they are required to assist a child with a disability to benefit from special education. (§22.1-213 of the Code of Virginia; 34 CFR 300.34(a) and (b))

Nothing in this section:

1. Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services

that are determined by the IEP team to be necessary for the child to receive FAPE;

2. Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or
3. Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly.

"School day" means any day, including a partial day, that children are in attendance at school for instructional purposes. The term has the same meaning for all children in school, including children with and without disabilities. (34 CFR 300.11)

"School health services and school nurse services" means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person. (Chapter 30 (§54.1-3000 et seq.) of Title 54.1 of the Code of Virginia; 34 CFR 300.34(c)(13))

"Scientifically based research" means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs and includes research that: (20 USC §9501(18); 34 CFR 300.35)

1. Employs systematic, empirical methods that draw on observation or experiment;
2. Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
3. Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
4. Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;
5. Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

6. Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

"Screening" means those processes that are used routinely with all children to identify previously unrecognized needs and that may result in a referral for special education and related services or other referral or intervention.

"Section 504" means that section of the Rehabilitation Act of 1973, as amended, which is designed to eliminate discrimination on the basis of disability in any program or activity receiving federal financial assistance. (29 USC §701 et seq.)

"Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty. (18 USC §1365(h)(3); 34 CFR 300.530(i)(3))

"Services plan" means a written statement that describes the special education and related services the LEA will provide to a parentally placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, and is developed and implemented in accordance with 8VAC20-81-150. (34 CFR 300.37)

"Social work services in schools" means those services provided by a school social worker or qualified visiting teacher, including: (Licensure Regulations for School Personnel, 8VAC20-22-660); 34 CFR 300.34(c)(14))

1. Preparing a social or developmental history on a child with a disability;
2. Group and individual counseling with the child and family;
3. Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
4. Mobilizing school and community resources to enable the child to learn as effectively as possible in the child's educational program; and
5. Assisting in developing positive behavioral intervention strategies for the child.

"Special education" means specially designed instruction, at no cost to the parent(s), to meet the unique needs of a child with a disability, including instruction conducted in a classroom, in the home, in hospitals, in institutions, and in other settings and instruction in physical education. The term includes each of the following if it meets the requirements of the definition of special education: (§22.1-213 of the Code of Virginia; 34 CFR 300.39)

1. Speech-language pathology services or any other related service, if the service is considered special education rather than a related service under state standards;

2. Vocational education; and

3. Travel training.

"Special education hearing officer" has the same meaning as the term "hearing officer" as that term is used in the Act and its federal implementing regulations.

"Specially designed instruction" means adapting, as appropriate to the needs of an eligible child under this chapter, the content, methodology, or delivery of instruction: (34 CFR 300.39(b)(3))

1. To address the unique needs of the child that result from the child's disability; and

2. To ensure access of the child to the general curriculum, so that the child can meet the educational standards that apply to all children within the jurisdiction of the local educational agency.

"Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; of mental retardation; of environmental, cultural, or economic disadvantage. (§22.1-213 of the Code of Virginia; 34 CFR 300.8(c)(10))

1. Dyslexia is distinguished from other learning disabilities due to its weakness occurring at the phonological level. Dyslexia is a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge.

"Speech or language impairment" means a communication disorder, such as stuttering, impaired articulation, expressive or receptive language impairment, or voice impairment that adversely affects a child's educational performance. (34 CFR 300.8(c)(11))

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"Speech-language pathology services" means the following: (34 CFR 300.34(c)(15))

1. Identification of children with speech or language impairments;
2. Diagnosis and appraisal of specific speech or language impairments;
3. Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
4. Provision of speech and language services for the habilitation or prevention of communicative impairments; and
5. Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

"State assessment program" means the state assessment program in Virginia under the Act that is the component of the state assessment system used for accountability.

"State educational agency" means the Virginia Department of Education. (34 CFR 300.41)

"State-operated programs" means programs that provide educational services to children and youth who reside in facilities according to the admissions policies and procedures of those facilities that are the responsibility of state boards, agencies, or institutions. (§§22.1-7, 22.1-340 and 22.1-345 of the Code of Virginia)

"Supplementary aids and services" means aids, services, and other supports that are provided in general education classes or other education-related settings to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate in accordance with this chapter. (34 CFR 300.42)

"Surrogate parent" means a person appointed in accordance with procedures set forth in this chapter to ensure that children are afforded the protection of procedural safeguards and the provision of a free appropriate public education. (34 CFR 300.519)

"Timely manner" if used with reference to the requirement for National Instructional Materials Accessibility Standard means that the local educational agency shall take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials.

"Transition from Part C (Early Intervention Program for Infants and Toddlers with Disabilities) services" means the steps identified in the Individualized Family Services Plan (IFSP) to be taken to support the transition of the child to: (34 CFR 300.124)

1. Early childhood special education to the extent that those services are appropriate; or

2. Other services that may be available, if appropriate.

"Transition services" if used with reference to secondary transition means a coordinated set of activities for a student with a disability that is designed within a results-oriented process that: (34 CFR 300.43)

1. Is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to postschool activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

2. Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests and includes instruction, related services, community experiences, the development of employment and other postschool adult living objectives and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if they are required to assist a student with a disability to benefit from special education.

"Transportation" includes: (34 CFR 300.34(c)(16))

1. Travel to and from school and between schools;
2. Travel in and around school buildings; and
3. Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

"Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma. (34 CFR 300.8(c)(12))

"Travel training" means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to: (34 CFR 300.39(b)(4))

1. Develop an awareness of the environment in which they live; and

2. Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

"Universal design" has the meaning given the term in §3 of the Assistive Technology Act of 1998, as amended, 29 USC §3002. The term "universal design" means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly usable (without requiring assistive technologies) and products and services that are made usable with assistive technologies. (34 CFR 300.44)

"Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton" or "Virginia schools" means the Virginia schools under the operational control of the Virginia Board of Education. The Superintendent of Public Instruction shall approve the education programs of the Virginia schools. (§22.1-346 of the Code of Virginia)

"Visual impairment including blindness" means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. (34 CFR 300.8(c)(13))

"Vocational education," for the purposes of special education, means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment or for additional preparation for a career not requiring a baccalaureate or advanced degree, and includes career and technical education. (34 CFR 300.39(b)(5))

"Ward of the state" means a child who, as determined by the state where the child resides is: (34 CFR 300.45)

1. A foster child;
2. A ward of the state; or
3. In the custody of a public child welfare agency.

"Ward of the state" does not include a foster child who has a foster parent who meets the definition of a "parent."

"Weapon" means dangerous weapon under 18 USC §930(g)(2). (34 CFR 530(i)(4))

Part II

Responsibilities of the State Department of Education

8VAC20-81-20. Functions of the Virginia Department of Education.

The Virginia Department of Education (state educational agency) shall perform the following functions:

1. Ensure that all children with disabilities, aged two to 21, inclusive, residing in Virginia have a right to a free appropriate public education, including, but not limited to,

children with disabilities who: (34 CFR 300.2 and 34 CFR 300.101)

- a. Are migrant;
- b. Are homeless;
- c. Have been suspended or expelled from school, in accordance with this chapter;
- d. Are incarcerated in a state, regional, or local adult or juvenile correctional facility, with the exception of those provisions identified in 8VAC20-81-110 I;
- e. Are in special education and related services, even though they have not failed or been retained in a course or grade, and are advancing from grade to grade;
- f. Are in state-operated programs; or
- g. Are in public charter schools in accordance with the Code of Virginia.

2. Except as provided in 8VAC20-81-80 F, ensure that each local school division develops an IEP for each child with a disability served by that local school division and that an IEP is developed for each child with a disability placed in a private school by a local school division or Comprehensive Services Act team. (34 CFR 300.112)

3. Review and submit to the Virginia Board of Education for approval a plan for the provision of special education and related services from each local educational agency responsible for providing educational services to children with disabilities. (§22.1-215 of the Code of Virginia; 34 CFR 300.200)

4. Ensure that each local educational agency includes all children with disabilities in all general Virginia Department of Education and division-wide assessment programs, including assessments described in §1111 of ESEA, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective IEPs and in accordance with the provisions of the Act at §1412. (20 USC §1412(a)(16)(A))

5. Ensure that each local educational agency takes steps for its children with disabilities to have available to them the variety of educational programs and services available to nondisabled children in the local educational agency, including art, music, industrial arts, consumer and homemaking education, and career and technical education. (34 CFR 300.110)

6. Ensure that each educational program for children with disabilities administered within Virginia: (34 CFR 300.149(a))

- a. Is under the general supervision of the persons responsible for educational programs for children with disabilities in Virginia; and

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b. Meets the educational standards of the Virginia Department of Education.

In carrying out these requirements with respect to homeless children, the requirements of Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act (42 USC §11431 et seq.) are met.

7. Prepare and submit for public hearing; receive comment from the public, members of the state special education advisory committee and private special education schools; and place on file with the U.S. Department of Education, final policies and procedures to ensure that the conditions of state eligibility for funding under the Act are met. (34 CFR 300.165)

8. Develop procedures for implementing state and federal laws and regulations pertaining to the education of children with disabilities. (§22.1-214 of the Code of Virginia; 34 CFR 300.199 and 34 CFR 300.129)

9. Assist local educational agencies and other participating state agencies in the implementation of state and federal laws and regulations pertaining to LRE requirements by: (34 CFR 300.119)

a. Ensuring that teachers and administrators are fully informed about their responsibilities for implementing LRE requirements; and

b. Providing them with technical assistance and training necessary to assist them in this effort.

10. Ensure that the requirements for LRE are implemented by each local educational agency. If there is evidence that a local educational agency's placements are inconsistent with LRE requirements, the Virginia Department of Education shall: (34 CFR 300.120)

a. Review the local educational agency's justification for its actions; and

b. Assist in planning and implementing any necessary corrective action.

11. Review and evaluate compliance of local educational agencies with state and federal laws and regulations pertaining to the education of children with disabilities and require corrective actions where needed. (34 CFR 300.149(b), 34 CFR 300.151 and 34 CFR 300.507)

a. Administer a special education due process hearing system that provides procedures for training of special education hearing officers, processing requests for a hearing, appointment of special education hearing officers, management and monitoring of hearings, and administration of the hearing system.

b. Maintain and operate a complaint system that provides for the investigation and issuance of findings regarding alleged violations of the educational rights of parents or

children with disabilities. Allegations may be made by public or private agencies, individuals or organizations.

12. Establish and implement a mediation process in accordance with the Act. (§22.1-214 of the Code of Virginia; 34 CFR 300.506)

13. Review and evaluate compliance of private nonsectarian special education schools that are licensed or have a certificate to operate in order to ensure that each child with a disability placed in the school by a local school division or Comprehensive Services Act team is provided special education and related services at no cost to the parent(s) in conformance with an IEP that meets the requirements of this chapter and meets the standards that apply to education provided by local educational agencies. (34 CFR 300.129, 34 CFR 300.146 and 34 CFR 300.147)

a. Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

b. Provide copies of all Virginia regulations and standards; and

c. Provide an opportunity for these schools to participate in the development and revision of Virginia's regulations that apply to them.

14. Review and evaluate compliance of the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton to ensure that each child with a disability placed in the school by a local school division is provided special education and related services at no cost to the parent(s) in accordance with an IEP that meets the requirements of this chapter and meets the standards that apply to education provided by local educational agencies. (34 CFR 300.149)

15. Establish and maintain a state special education advisory committee composed of individuals involved in or concerned with the education of children with disabilities. (34 CFR 300.167 through 34 CFR 300.169)

a. Membership. The membership shall consist of individuals appointed by the Superintendent of Public Instruction or designee who are involved in, or concerned with, the education of children with disabilities. The majority shall be individuals with disabilities or parents of children with disabilities (ages birth through 26). Membership shall include one or more of the following:

(1) Parents of children with disabilities (ages birth through 26);

(2) Individuals with disabilities;

(3) Teachers;

(4) Representatives of institutions of higher education that prepare special education and related services personnel;

(5) State and local education officials, including officials who carry out activities under Subtitle B of Title VII of the McKinney-Vento Homeless Act (42 USC §11431 et seq);

(6) Administrators of programs for children with disabilities;

(7) Representatives of other state agencies involved in the financing or delivery of related services to children with disabilities;

(8) Representatives of private schools and public charter schools;

(9) At least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;

(10) A representative from Virginia's juvenile and adult corrections agencies; and

(11) A representative from Virginia's child welfare agency responsible for foster care.

b. Duties. The state special education advisory committee shall:

(1) Advise the Virginia Department of Education and the Virginia Board of Education of unmet needs within the state in the education of children with disabilities;

(2) Comment publicly on any rules or regulations proposed by the Virginia Board of Education regarding the education of children with disabilities;

(3) Advise the Virginia Department of Education in developing evaluations and reporting on data to the U.S. Secretary of Education under the Act;

(4) Advise the Virginia Department of Education in developing corrective action plans to address findings identified in federal monitoring reports under the Act;

(5) Advise the Virginia Department of Education in developing and implementing policies relating to the coordination of services for children with disabilities; and

(6) Review the annual plan submitted in accordance with 8VAC20-81-230 B 2 submitted by state-operated programs, the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton.

c. Procedures.

(1) The state special education advisory committee shall meet as often as necessary to conduct its business.

(2) By October 1 of each year, the state special education advisory committee shall submit an annual report of

committee activities and suggestions to the Virginia Board of Education. The report shall be made available to the public in a manner consistent with other public reporting requirements of Part B of the Act.

(3) Official minutes shall be kept on all committee meetings and shall be made available to the public on request.

(4) All meetings and agenda items shall be publicly announced enough in advance of the meeting to afford interested parties a reasonable opportunity to attend, and meetings shall be open to the public.

(5) Interpreters and other necessary accommodations shall be provided for advisory committee members or participants.

(6) The advisory committee shall serve without compensation, but the Virginia Department of Education shall reimburse the committee for reasonable and necessary expenses for attending meetings and performing duties.

16. Provide a report annually to the state special education advisory committee on the Virginia Department of Education's dispute resolution systems, including information related to due process hearings and decisions. This report and due process hearing decisions, with all personally identifiable information deleted, are made available to the public on the Virginia Department of Education's website. (34 CFR 300.513(d))

17. Establish goals for the performance of children with disabilities that: (34 CFR 300.157(a))

a. Promote the purposes of the Act;

b. Are the same as Virginia's objectives for progress by children in its definition of adequate yearly progress, including Virginia's objectives for progress by children with disabilities, under §1111(b)(2)(C) of the ESEA, 20 USC §6311;

c. Address graduation rates and drop out rates, as well as such other factors as Virginia may determine; and

d. Are consistent, to the maximum extent appropriate, with any other goals and academic standards for children as established by Virginia.

18. Establish performance indicators Virginia will use to assess progress toward achieving the goals in subdivision 17 of this section, including measurable annual objectives for progress by children with disabilities under §1111(b)(2)(C)(v)(II)(cc) of the ESEA, 20 USC §6311. Annually report to the public and the United States Secretary of Education on the progress of children with disabilities in Virginia, toward meeting the goals described in subdivision 17 of this section, which may include

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elements of the reports required under §1111(h) of the ESEA. (34 CFR 300.157(b) and (c))

19. Establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this chapter are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. These requirements include: (34 CFR 300.156(a) through (d))

a. Related services personnel and paraprofessionals. The qualifications shall:

(1) Be consistent with any Virginia-approved or Virginia-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;

(2) Ensure that related services personnel who deliver services in their discipline or profession have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(3) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with state law, regulation, or written policy, in meeting the requirements of this chapter to be used to assist in the provision of special education and related services to children with disabilities.

b. Ensuring that each person employed as a public school special education teacher in Virginia who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in §1119(a)(2) of the ESEA.

c. Requiring local educational agencies to take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to children with disabilities.

20. Respond to complaints filed by a parent about staff qualifications as provided for under this chapter. Notwithstanding any other individual right of action that a parent or student may maintain under this chapter, nothing in this chapter shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of the Virginia Department of Education or local educational agency employee to be highly qualified. (34 CFR 300.156(e))

21. Secure agreements with state agency heads regarding appropriate roles and responsibilities for the identification, evaluation, placement, and delivery of or payment for educational and related services in order to ensure that a free appropriate public education is provided to all children with disabilities. The agreements shall address financial responsibility for each nonpublic educational agency for

the provision of services. The agreements shall include procedures for resolving interagency disputes and for securing reimbursement from other agencies, including procedures under which local educational agencies may initiate proceedings. (34 CFR 300.154)

22. Disburse the appropriated funds for the education of children with disabilities in Virginia to local school divisions and state-operated programs that are in compliance with state and federal laws and regulations pertaining to the education of children with disabilities. (34 CFR 300.705 and 34 CFR 300.816)

23. Ensure that a practical method is developed and implemented to determine which children, including children with disabilities who are homeless or are wards of the state, are currently receiving needed special education and related services. Report and certify annually to the United States Department of Education the number of children with disabilities in local educational agencies who are receiving special education and related services on any date between October 1 and December 1 of each year. The annual report of children served shall meet the provisions of 34 CFR 300.641 through 34 CFR 645. (34 CFR 300.111 and 34 CFR 300.640)

24. Ensure that a practical method is developed and implemented to determine if significant disproportionality based on race and ethnicity is occurring in the local educational agencies. This method shall include the collection and examination of data with respect to: (34 CFR 300.646(a) and 34 CFR 300.173)

a. The identification of children as children with disabilities, including the identification of a particular impairment described in 8VAC20-81-10, "Child with a disability";

b. The placement in particular educational settings of these children; and

c. The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

25. Ensure that in the determination of significant disproportionality, the Virginia Department of Education: (34 CFR 300.646(b))

a. Reviews and, if appropriate, revises the policies, procedures, and practices used by the local educational agency in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of this chapter;

b. Requires any local educational agency determined to have a significant disproportionality to reserve the maximum amount of funds under this chapter to provide comprehensive coordinated early intervening services to serve children in the local educational agency,

particularly, but not exclusively, children in those groups that were significantly overidentified; and

c. Requires the local educational agency to publicly report on the revision of policies, practices, and procedures addressing the disproportionality.

26. Establish procedures designed to fully inform parents and children with disabilities of educational rights and due process procedures, and ensure that each local educational agency is informed of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that local educational agency. (34 CFR 300.121 and 34 CFR 300.150)

27. Ensure that requirements regarding use of public or private insurance to pay for services required under this chapter are met. (34 CFR 300.154(d))

28. Ensure that if the Virginia Department of Education provides direct services to children with disabilities, complies with state and federal requirements as if it is a local educational agency and uses federal funds under Part B of the Act to provide services. (34 CFR 300.175)

a. The Virginia Department of Education shall use payments that would otherwise have been available to a local educational agency to provide special education services directly to children with disabilities residing in the local school division or served by a state-operated program in accordance with the conditions of §1413(h) of the Act.

b. The Virginia Department of Education may provide special education and related services in the manner and at the location it considers appropriate, consistent with least restrictive environment requirements.

29. Ensure that children who participate in early intervention services assisted under Part C of the Act and who will participate in preschool programs assisted under Part B of the Act experience a smooth and effective transition to early childhood special education programs in a manner consistent with the Virginia Part C lead agency's early intervention policies and procedures as follows: (34 CFR 300.124)

a. For those children who at age two (on or before September 30) are found eligible for Part B early childhood special education programs, IEPs are developed and implemented for those children; and

b. The local educational agency will participate in transition planning conferences arranged by the designated local Part C early intervention agency.

30. Ensure the protection of the confidentiality of any personally identifiable information collected, maintained, or used under Part B of the Act. This shall include notice to fully inform parents about the confidentiality of

information as specified in 34 CFR 300.612, and policies and procedures that are used in the event that parents refuse to provide consent for disclosure of education records. These policies and procedures shall comply with the provisions of 34 CFR 300.612 through 34 CFR 300.626. (34 CFR 300.123 and 34 CFR 300.610)

31. Ensure that a practical method is developed and implemented to: (34 CFR 300.170)

a. Examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies occur in the rate of long-term suspensions and expulsions with children with disabilities:

(1) Among local educational agencies in Virginia; or

(2) Compared to the rates for nondisabled children within the local school division.

b. Review discrepancies and, if appropriate, require the local educational agency to revise its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.

32. Adopt the National Instructional Materials Accessibility Standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities. (34 CFR 300.172)

a. Ensure that local educational agencies take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials; and

b. In carrying out the provisions of this subsection, to the maximum extent possible, work collaboratively with the state agency responsible for assistive technology programs.

33. Prohibit the Virginia Department of Education and local educational agency personnel from requiring parents to obtain a prescription for substances identified under Schedule I, II, III, IV, or V in §202(c) of the Controlled Substances Act (21 USC §812(c)) for a child as a condition of attending school, receiving an evaluation under this chapter, or receiving services under this chapter. (34 CFR 300.174(a))

34. Monitor, enforce, and provide technical assistance regarding the implementation of the requirements under the Act. These actions include: (34 CFR 300.600 through 34 CFR 300.645; 34 CFR 300.149(b) and 34 CFR 300.165(b))

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a. Providing the Secretary of Education state performance reports and data collections in accordance with the provisions of 34 CFR 300.600 through 34 CFR 300.602.

b. Taking appropriate enforcement and technical assistance measures to assist local educational agencies in complying with the provisions of the Act in accordance with the provisions of 34 CFR 300.600 through 34 CFR 300.602 and 34 CFR 300.608.

c. Establishing that the focus of Virginia's monitoring activities are on:

(1) Improving educational results and functional outcomes for all children with disabilities; and

(2) Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

d. Using quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in 34 CFR 300.600(d), and the indicators established by the U.S. Secretary of Education for the state performance plans.

e. Using the targets established in Virginia's performance plan and the priority areas described in 34 CFR 300.600(d) to analyze the performance of each local educational agency.

f. Following all the reporting requirements under 34 CFR 300.602(b).

g. Notifying the public of the pendency of an enforcement action taken by the U.S. Department of Education pursuant to 34 CFR 300.604.

h. Prohibiting the local educational agency from reducing the local educational agency's maintenance of effort under 34 CFR 300.203 for any fiscal year if the Virginia Department of Education determines that a local educational agency is not meeting the requirements of Part B of the Act, including the targets in Virginia's state performance plan.

Part III

Responsibilities of Local School Divisions and State-Operated Programs

8VAC20-81-30. Responsibility of local school divisions and state-operated programs.

A. The requirements set forth in this chapter are applicable to local school divisions and state-operated programs providing education and related services for children with disabilities and are developed in accordance with state and federal laws and regulations.

B. Each local school division shall ensure that all children with disabilities, aged two to 21, inclusive, residing in that school division have a right to a free appropriate public education. (§22.1-214 of the Code of Virginia; 34 CFR 300.2, 34 CFR 300.101, 34 CFR 300.124 and 34 CFR 300.209)

The children include:

1. Children with disabilities who are migrant;

2. Children with disabilities who are homeless;

3. Children with disabilities who are in need of special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade;

4. Children with disabilities who are served in a public nonprofit charter school;

5. Children with disabilities who have been suspended or expelled from school;

6. Children with disabilities who are incarcerated for 10 or more days in a regional or local jail in its jurisdiction, with the exception of those additional provisions identified in 8VAC20-81-110 I;

7. Children with disabilities who are residents of the school division and who are on house arrest, as ordered by a court of competent jurisdiction;

8. Children with disabilities who are in foster care and residents of Virginia;

9. Children with disabilities who are placed for noneducational reasons; and

10. Children with disabilities regardless of citizenship or immigration status.

C. Every child with a disability is deemed to reside in a school division when:

1. The child is living with a biological parent whose parental rights have not been terminated.

2. The child is living with an adoptive parent.

3. The child is living with an individual:

a. Other than the custodial parent but who is defined as a parent in §22.1-1 of the Code of Virginia, not solely for school purposes, and

b. Pursuant to a special power of attorney executed under 10 USC §1044b by the custodial parent while such custodial parent is deployed outside the United States as a member of the Virginia National Guard or as a member of the United States Armed Forces.

4. The parent(s) of the child is deceased and the child is living with a person in loco parentis who resides within the school division.

5. The parents of the child are unable to care for him and he is living, not solely for school purposes, with another person who resides in the school division and is either:

- a. The court-appointed guardian, or has legal custody; or
- b. Acting in loco parentis pursuant to placement of the child by a person or entity authorized to do so under §63.2-900 of the Code of Virginia.

6. The child is living in the school division not solely for school purposes, as an emancipated minor pursuant to the provisions of the §16.1-334 of the Code of Virginia.

7. The child is in foster care and a resident of Virginia, but not a resident of the school division, under the following conditions: (§22.1-215 of the Code of Virginia)

- a. The child has been placed in foster care or other custodial care within the geographical boundaries of the school division, placed by a Virginia agency, whether state or local, that is authorized by the Code of Virginia to place children; or
- b. The child has been placed, not solely for school purposes, in a child-caring institution or group home licensed under the provisions of Chapter 17 (§63.2-1700 et seq.) of Title 63.2 of the Code of Virginia that is located within the geographical boundaries of the school division.

8. The child is in foster care and a resident of Virginia, and a resident of the school division, under the provisions of subdivision 7 of this subsection.

D. If a child with a disability is living with the parent in the residence of the local school division, the local school division is responsible for ensuring that the child receives a free appropriate public education even if the enrollment requirements for the child are not completed within a reasonable period of the parents' request to enroll the child. (34 CFR 300.101)

E. Requirements for children with disabilities who are placed for noneducational reasons:

1. The local school division that is part of the Comprehensive Services Act team that places the child in a private residential placement for noneducational reasons shall ensure that the child's IEP team develops an IEP appropriate for the child's needs while the child is in the residential placement.

2. If a child in foster care is placed in a local school division of nonresidence and the IEP team of the local school division of nonresidence where the child is placed determines that the child needs to be placed in a private day or residential special education facility for educational reasons, the responsibility for a free appropriate public education transfers to the local school division where the

Virginia placing agency is located and is a participant in the community policy and management team of that local school division that has responsibility for the child under the Comprehensive Services Act (Chapter 52 (§2.2-5200 et seq.) of Title 2.2 of the Code of Virginia).

3. If placed in a nursing facility, a long stay hospital, or an intermediate care facility for the mentally retarded under funding from the Virginia Department of Medical Assistance Services, the child is a resident of the division where the parent(s) resides, unless the child is in a state-operated program.

4. If placed in a group home by a community services board, a court service unit, or a court of competent jurisdiction, the child is a resident of the division where the parent(s) resides, unless the child is in a state-operated program.

5. If the child is aged 18 or older and placed in a nursing facility, a long stay hospital, or an intermediate care facility for the mentally retarded under funding from the Virginia Department of Medical Assistance Services, and who has been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides, unless the adult child with a disability is in a state-operated program.

6. If the child is aged 18 or older and placed in a group home by a community services board and has been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides, unless the adult child is in a state-operated program.

7. If the child is aged 18 or older, who has not been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has not appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides, unless the adult child is in a state-operated program. The adult child's residence is the fixed home to which the adult child will return following the child's return from a facility and at which the adult child intends to stay. No adult child shall have more than one residence at a time.

8. If the child is aged 18 or older, who has been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has appointed a guardian to make decisions, the adult child is a resident of the division where the guardian resides, unless the adult child is in a state-operated program. The adult child's residence shall be the fixed home to which the adult child will return from a facility and at which the adult child

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intends to stay. No adult child shall have more than one residence at a time.

F. If there is a dispute between local school divisions regarding the parent's or legal guardian's residence, the local school division of the parent's or legal guardian's last known place of residence is responsible until such dispute is resolved or the parent's or legal guardian's residence is established in another local school division.

G. If there is dispute between the parent or legal guardian of a child with a disability and the local school division regarding residency, the local school division of where the child is last enrolled remains responsible for providing the child with a free appropriate public education until resolution of the dispute.

H. Each state-operated program shall ensure that children with disabilities, aged two to 21, inclusive, in that institution have the right to a free appropriate public education. (§22.1-7 of the Code of Virginia)

I. Children with disabilities who are not residents of Virginia but are living temporarily with adults who do not otherwise meet the definition of parent(s) residing within a school division may, in the discretion of the local school board's policies and procedures, be admitted to the public schools of the school division for special education and related services. Tuition charges associated with this admittance are subject to the provisions of §22.1-5 of the Code of Virginia.

8VAC20-81-40. Special education staffing requirements.

A. School age programs. The following specifies the staffing patterns for special education services for school age (five to 21, inclusive) children, in addition to the Standards of Quality (§22.1.253.13:2 of the Code of Virginia) and Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131-240).

1. Staffing shall be in accordance with the requirements of 8VAC20-81-340 in the following settings.

a. Students with disabilities shall be instructed with students without disabilities in general education settings and classrooms, as appropriate, and in accordance with the Individualized Education Program (IEP). The service level, Level I or II, is based on the amount of time the student receives special education.

b. When children with disabilities are removed from the general education setting and classroom to provide instruction, special education and related services, they may receive services with children with the same disability or with children with different disabilities.

2. Personnel assignment.

a. Each student shall receive special education services from special education personnel assigned in accordance

with the Virginia Licensure Regulations for School Personnel (8VAC20-22).

b. Special education teachers who are the teachers of record for instructing one or more federal core subjects to students with disabilities shall be highly qualified.

c. General education qualified personnel who are knowledgeable about the students and their special education, may implement special education services in collaboration with special education personnel.

d. Special education services include those services provided directly to the student and those provided indirectly.

3. Caseload standards.

a. The maximum instructional caseloads for special education teachers and speech-language pathologists, for which public schools receive state funds in accordance with the Virginia Appropriation Act are listed in 8VAC20-81-340. Special education services for children with visual impairment are established, maintained, and operated jointly by the local school board and the Virginia Department for the Blind and Vision Impaired.

b. If children with disabilities in a single building receive academic content area instruction from multiple special education teachers, the teachers' caseloads shall be determined by using a building average.

(1) A building average is computed by dividing the total weights (found in 8VAC20-81-340) for all children served in this fashion by the number of special education teachers providing services. Any itinerant teacher shall be counted according to the amount of time the teacher spends in the school. Subdivision 3 d of this subsection applies for any teacher assigned to administrative duties or to providing services to children who do not have disabilities.

(2) The building average shall not exceed 20 points if services are provided to students receiving Level I services and to children receiving Level II services. The building average shall not exceed 24 points if services are provided only to children receiving Level I services.

(3) No more than 14 children shall be assigned to a single class period if there are similar achievement levels and one subject area and level are taught. No more than 10 students shall be assigned to a single class period when there are varying achievement levels.

c. Special education personnel may also be assigned to serve children who are not eligible for special education and related services under this chapter, as long as special education personnel hold appropriate licenses and endorsements for such assignments.

d. When special education personnel are assigned to provide services for children who do not have a disability under this chapter or are assigned to administrative duties, a reduction in the caseload specified in the Virginia Appropriation Act shall be made in proportion to the percentage of school time on such assignment.

(1) This provision does not apply when special education and related services are provided in a general education class, based on the goals of the IEP of at least one child in that classroom, and children without disabilities incidentally benefit from such services.

(2) When special education personnel provide services in a general education classroom based on the IEP goals of at least one child in that classroom, the special education caseloads do not include children with disabilities who incidentally benefit from such services.

B. Staffing for early childhood special education.

1. Children of preschool ages (two to five, inclusive) who are eligible for special education receive early childhood special education. The amount of services is determined by the child's individualized education program (IEP) team. A schedule comparable in length to school age students shall be made available if determined appropriate by the IEP team.

2. Staffing requirements.

a. Children receiving early childhood special education services may receive services together with other preschool-aged children with the same or with different disabilities.

b. Each student shall receive special education services from special education personnel assigned in accordance with the Virginia Licensure Regulations for School Personnel (8VAC20-22).

c. The maximum special education caseloads, with and without paraprofessionals, are set and funded in the Virginia Appropriation Act. See 8VAC20-81-340 for the funded caseloads. Special education services for children with visual impairment are established, maintained, and operated jointly by the local school board and the Virginia Department for the Blind and Vision Impaired.

C. Staffing for education programs in regional and local jails. Special education personnel with any special education endorsement, except early childhood special education, may provide instructional services to eligible students with disabilities incarcerated in a regional or local jail.

D. Alternative special education staffing plan. School divisions and private special education schools may offer for consideration of approval, an alternative staffing plan in accordance with Virginia Department of Education procedures. The Virginia Department of Education may grant

approval for alternative staffing levels upon request from local school divisions and private special education schools seeking to implement innovative programs that are not consistent with these staffing levels.

E. Educational interpreting services.

1. The qualification requirements for personnel providing interpreting services are as follows:

a. Personnel providing educational interpreting services for children using sign language shall have a Virginia Quality Assurance Screening (VQAS) Level III, or a passing score on the Educational Interpreter Performance Assessment (EIPA) written test along with a minimum of a Level 3.5 on the EIPA performance test or any other state or national certification (National Interpreter Certification) recognized by the Virginia Department for the Deaf and Hard of Hearing as equivalent to or exceeding the VQAS Level III. Under no circumstances shall local educational agencies or private special education schools hire interpreters who hold qualifications below a VQAS Level II, EIPA Level 3.0 or the equivalent from another state. Interpreters hired with a VQAS Level II, EIPA Level 3.0 or the equivalent have one year to reach the required qualifications.

b. Personnel providing educational interpreting services for children using cued speech/language shall have a Virginia Quality Assurance Screening Level III for cued speech/language or hold a Transliteration Skills Certificate from the Testing, Evaluation and Certification Unit (TEC Unit).

c. Personnel providing educational interpreting services for children requiring oral interpreting shall meet minimum requirements for competency on the Virginia Quality Assurance Screening's written assessment of the Code of Ethics and hold a national Oral Interpreter Credential (OIC).

8VAC20-81-50. Child find.

A. Child find.

1. Each local school division shall maintain an active and continuing child find program designed to identify, locate and evaluate those children residing in the jurisdiction who are birth to age 21, inclusive, who are in need of special education and related services, including children who: (34 CFR 300.102 and 34 CFR 300.111)

a. Are highly mobile, such as migrant and homeless children;

b. Are wards of the state;

c. Attend private schools, including children who are home-instructed or home-tutored;

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d. Are suspected of being children with disabilities under this chapter and in need of special education, even though they are advancing from grade to grade; and

e. Are under age 18, who are suspected of having a disability who need special education and related services, and who are incarcerated in a regional or local jail in its jurisdiction for 10 or more days.

2. Each local school division shall coordinate child find activities for infants and toddlers (birth to age two, inclusive) with the Part C local interagency coordinating council. (34 CFR 300.124)

3. Each local school division shall locate, identify and evaluate children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools. (34 CFR 300.131, 34 CFR 300.133, 34 CFR 300.134)

a. The child find process shall be designed to ensure:

(1) The equitable participation of parentally placed private school children, and

(2) An accurate count of those children.

b. The local school division shall undertake activities similar to the activities undertaken for its public school children.

c. The cost of carrying out the child find requirements, including individual evaluation, may not be considered in determining if a local educational agency has met its obligation under 34 CFR 300.133.

d. The child find process shall be completed in a time period comparable to that for students attending public school in the LEA.

e. Each local school division in which private, including religious, elementary and secondary schools, are located, shall include parentally placed private school children, including those who reside in a state other than Virginia, or country other than the United States.

(1) If the location of the administration of the private school in which the child attends is different from the school division in which the private school is located, the school division in which the private school is located and which the child attends is responsible for the child find activities.

f. The local school division shall consult with appropriate representatives of private school children with disabilities, as well as home-instructed or home-tutored children with disabilities, on how to implement the child find and evaluation activities.

B. Public awareness.

1. Each local school division shall, at least annually, conduct a public awareness campaign to:

a. Inform the community of a person's, ages two to 21, inclusive, statutory right to a free appropriate public education and the availability of special education programs and services;

b. Generate referrals; and

c. Explain the nature of disabilities, the early warning signs of disabilities, and the need for services to begin early.

C. Screening.

1. Each local school division shall have procedures, including timelines, to document the screening of children enrolled in the division, including transfers from out of state as follows:

a. Children shall be screened in the areas of hearing and vision in accordance with the requirements of 8VAC20-250-10. (§22.1-273 of the Code of Virginia)

b. Children shall be screened for scoliosis in accordance with the requirements of 8VAC20-690-20. (§22.1-273.1 of the Code of Virginia)

c. Children shall be screened in the areas of speech, voice, language, and fine and gross motor functions to determine if a referral for an evaluation for special education and related services is indicated.

d. Children who fail any of the above screenings may be rescreened if the original results are not considered valid.

e. The local educational agency may recognize screenings reported as part of the child's pre-school physical examination required under the Code of Virginia. (§22.1-270 of the Code of Virginia)

f. Children shall be referred to the special education administrator or designee if results suggest that a referral for evaluation for special education and related services is indicated. The referral shall include the screening results.

2. The local school division shall provide all applicable procedural safeguards. These safeguards include the following:

a. Written notice to parents of the scheduled screening and, if the child fails the screening, the results of the screening;

b. Confidentiality; and

c. Maintenance of the student's scholastic record.

3. Screening for instructional purposes is not an evaluation. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for

curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services. (34 CFR 300.302)

D. Each school division shall have procedures to review records, assess whether the child was provided appropriate instruction, and review other performance evidence of the child referred through a screening process, or by school staff, the parent(s), or other individuals. (34 CFR 300.309(c))

1. The local school division's procedures shall ensure that if a child received early intervening services or other scientific research-based interventions these services do not needlessly delay a child suspected of having a disability from being evaluated for special education and related services. Such procedures shall include:

- a. Tracking and reviewing timelines;
- b. Instructions on maintaining data-based documentation reflecting the child's progress during instruction in the child's area(s) of difficulty; and
- c. Written progress reports to the child's parent(s) at reasonable intervals for documenting the progress of the intervention strategies to address the child's learning, behavior, communication, or development.

2. If the child has not made adequate progress after an appropriate period of time, during which the conditions of providing appropriate high-quality, research-based instruction in general education settings delivered by qualified personnel and data-based documentation requirements have been implemented, a referral for an evaluation to determine if the child needs special education and related services shall be made to the special education administrator or designee.

E. Each school division shall have procedures to process in a timely manner all referral requests for a child suspected of having a disability. (34 CFR 300.507)

1. The local school division's procedures shall ensure that the processing of such referrals do not needlessly delay a child suspected of having a disability from being evaluated for special education and related services.

2. If the school division decides not to evaluate, prior written notice, in accordance with 8VAC20-81-170 shall be given to the parent(s), including the parent's right to appeal the decision through the due process hearing procedures.

F. Prohibition on mandatory medication.

1. The Virginia Department of Education prohibits state and LEA personnel from requiring parents to obtain a prescription for substances identified under Schedule I, II, III, IV, or V in §202(c) of the Controlled Substances Act (21 USC §812(c)) for a child as a condition of attending

school, receiving an evaluation under 34 CFR 300.300 through 34 CFR 300.311, or receiving services under this part.

2. Teachers and other school personnel may consult or share classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services. (34 CFR 300.174)

8VAC20-81-60. Referral for initial evaluation.

A. All children, aged two to 21, inclusive, whether enrolled in public school or not, who are suspected of having a disability, shall be referred to the special education administrator or designee, who shall initiate the process of determining eligibility for special education and related services.

1. Referrals may be made by any source including school staff, a parent(s), the Virginia Department of Education, any other state agency, or other individuals. (34 CFR 300.301(b))

2. The referring party shall inform the special education administrator or designee of why an evaluation is requested and efforts that have been made to address the concerns. The referral may be made in oral or written form.

B. Procedures for referral for initial evaluation.

1. Upon receipt of the referral for initial evaluation for the provision of special education and related services to a child with a disability, regardless of the source, the special education administrator, or designee, shall:

- a. Record the date the referral was received, reason for referral, and names of the person or agency making the referral;
- b. Implement procedures for maintaining the confidentiality of all data;
- c. Provide written notice and procedural safeguards to inform the parent(s) in the parents' native language or primary mode of communication, unless it is clearly not feasible to do so, about:

- (1) The referral for evaluation,
- (2) The purpose of the evaluation, and
- (3) Parental rights with respect to evaluation and other procedural safeguards;

d. Inform the parent(s) of the procedures for the determination of needed evaluation data and request any evaluation information the parent(s) may have on the child;

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e. Secure informed consent from the parent(s) for the evaluation;

f. Ensure that all evaluations consist of procedures that:

(1) Gather relevant functional, developmental and academic information about the child to determine if the child is a child with a disability; and

(2) Are sufficiently comprehensive to identify all of the child's special education and related services needs, and educational needs; and

g. Ensure that all evaluations are completed and that decisions about eligibility are made within 65 business days after the parent has provided written consent to the evaluation process. The time frame shall not apply to the local school division if:

(1) The parent(s) of the child repeatedly fails or refuses to produce the child for the evaluation; or

(2) If the child enrolls in a school served by the local school division after the required 65 business days has begun and prior to a determination by the child's previous local school division as to whether the child is a child with a disability. This exception only applies if the local school division is making sufficient progress to ensure a prompt completion of the evaluation and the parent(s) and the local school division where the child is enrolled in school agree to a specific time when the evaluation will be completed.

The parent and eligibility group may agree in writing to extend the 65-day timeline to obtain additional data that cannot be obtained within the 65 business days. (34 CFR 300.300(a), 34 CFR 300.304)

If the decision is to not evaluate, prior written notice, in accordance with 8VAC20-81-170, shall be given to the parent(s), including the parent's right to appeal the decision through due process hearing procedures. (34 CFR 300.507)

3. Parental consent requirements. (34 CFR 300.300)

a. Parental consent is not required before reviewing existing data as part of an evaluation or administering a test or other evaluation that is administered to all children, unless parental consent is required before administration to all children.

b. Parental consent for initial evaluation shall not be construed as consent for initial provision of special education and related services.

c. The local school division shall make reasonable efforts to obtain parental consent for an initial evaluation to determine whether the child is a child with a disability.

d. For initial evaluations only, if the child is a ward of the state and is not residing with the child's parent, the local

school division is not required to obtain parental consent to determine whether the child is a child with a disability if:

(1) Despite reasonable efforts to do so, the local school division cannot discover the whereabouts of the parent of the child;

(2) The rights of the parents of the child have been terminated in accordance with Virginia law; or

(3) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with Virginia law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

The local school division shall then proceed with evaluating the child without finalizing the appointment of a surrogate parent.

e. If the parent does not provide consent for the initial evaluation, or fails to respond to a request to provide consent, the local school division may, but is not required to, use the dispute resolution options of mediation or due process to pursue the initial evaluation of the child.

The local school division does not violate its obligation under child find or other free appropriate public education provisions if it declines to pursue the evaluation.

f. If a parent of a child who is home-instructed or home-tutored, or who is placed in a private school by the parent(s) at the parent's own expense, does not provide consent for initial evaluation, or the parent fails to respond to a request to provide consent, the local school division may not use mediation or due process to pursue the initial evaluation.

8VAC20-81-70. Evaluation and reevaluation.

A. Each local educational agency shall establish procedures for the evaluation and reevaluation of referrals of children in accordance with the provisions of this section.(34 CFR 300.122)

B. Determination of needed evaluation data for initial evaluation or reevaluation. (34 CFR 300.305 and 34 CFR 300.507)

1. Review of existing evaluation data. A group that is comprised of the same individuals as an IEP team and other qualified professionals, as appropriate, shall:

a. Review existing evaluation data on the child, including:

(1) Evaluations and information provided by the parent(s) of the child;

(2) Current classroom-based, local, or state assessments and classroom-based observations; and

(3) Observations by teachers and related services providers; and

b. On the basis of that review and input from the child's parent(s), identify what additional data, if any, are needed to determine:

(1) Whether the child is, or continues to be, a child with a disability;

(2) The present educational needs of the child;

(3) The child's present level of academic achievement and related developmental needs; and

(4) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

2. Conduct of review. The group completing the review may conduct its review without a meeting. The local educational agency shall provide notice to ensure that the parent(s) has the opportunity to participate in the review. If there is a meeting, the local educational agency shall provide notice of the meeting early enough to ensure that the parent(s) will have an opportunity to participate. The notice shall indicate the purpose, date, time, and location of the meeting and who will be in attendance.

3. Need for additional data. The local educational agency shall administer tests and other evaluation materials as may be needed to produce the data identified in this subsection.

4. This process shall be considered the evaluation if no additional data are needed.

5. If the team determines not to evaluate a child suspected of a disability, prior written notice, in accordance with 8VAC20-81-170, shall be given to the parent(s), including the parent's rights to appeal the decision through due process proceedings.

C. The local educational agency shall establish policies and procedures to ensure that the following requirements are met. (§22.1-214 of the Code of Virginia; 34 CFR 300.304 and 34 CFR 300.310)

1. Tests and other evaluation materials used to assess a child under this chapter are selected and administered so as not to be discriminatory on a racial or cultural basis.

2. Each assessment and other evaluation materials shall be provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so.

3. Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.

4. A variety of assessment tools and strategies are used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent(s), and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining whether the child is a child with a disability and the content of the child's IEP.

5. The assessment tools and strategies used provide relevant information that directly assists persons in determining the educational needs of the child.

6. Any standardized tests that are given to a child:

a. Have been validated for the specific purpose for which they are used; and

b. Are administered by knowledgeable and trained personnel in accordance with the instructions provided by the producer of the tests.

7. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test or the method of test administration) shall be included in the evaluation report.

8. Any nonstandardized test administered by qualified personnel may be used to assist in determining whether the child is a child with a disability and the contents of the child's IEP.

9. Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

10. Tests are selected and administered so as to best ensure that if a test is administered to a child with impaired sensory, motor, or communication skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure rather than reflecting the child's impaired sensory, motor, or communication skills (except where those skills are the factors that the test purports to measure).

11. The evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

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12. Technically sound instruments are used that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

13. No single measure or assessment is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for a child.

14. If the evaluation requires assessments in more than one area relating to the suspected disability, a group of persons, including at least one teacher or other specialist with knowledge in the area of the suspected disability, shall complete the assessments.

15. For a child suspected of having a specific learning disability, the evaluation shall include an observation of academic performance in the regular classroom by at least one team member other than the child's regular teacher. In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

16. Each child is assessed by a qualified professional in all areas relating to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, motor abilities, and adaptive behavior. This may include educational, medical, sociocultural, psychological, or developmental assessments.

a. The hearing of each child suspected of having a disability shall be screened during the eligibility process prior to initial determination of eligibility for special education and related services.

b. A complete audiological assessment, including tests that will assess inner and middle ear functioning, shall be performed on each child who is hearing impaired or deaf or who fails two hearing screening tests.

D. A written copy of the evaluation report shall be provided at no cost to the parent(s). The report shall be available to the parent(s) no later than two business days before the meeting to determine eligibility. (34 CFR 300.306(a)(2))

E. Assessments of children with disabilities or suspected of having a disability who transfer from one local educational agency to another local educational agency in the same school year shall be coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with 8VAC20-81-120, to ensure prompt completion of full evaluations. (34 CFR 300.304(c)(5))

F. Reevaluation.

1. A reevaluation shall be conducted: (34 CFR 300.303(a) and (b)(2))

a. If the local educational agency determines that the child's educational or related services needs, including improved academic achievement and functional performance, warrants a reevaluation;

b. If the child's parent(s) or teacher requests a reevaluation; or

c. At least once every three years, unless the parent and local educational agency agree that a reevaluation is unnecessary.

2. The local educational agency shall not conduct a reevaluation more than once a year unless the parent(s) and the local educational agency agree otherwise. If the local educational agency does not agree with the parent's request for a reevaluation, the local educational agency shall provide the parent(s) with prior written notice in accordance with 8VAC20-81-170. (34 CFR 300.303(b)(1))

3. As part of a reevaluation, the local educational agency shall ensure that a group comprised of the same individuals as an IEP team, and other qualified professionals, as appropriate follow the provisions of subsection B of this section in determining: (34 CFR 300.305(a))

a. Whether the child continues to have a disability;

b. The child's educational needs, including the present levels of academic achievement and related developmental needs of the child;

c. Whether the child continues to need special education and related services; or

d. Whether any additions or modifications to the special education and related services are needed to meet the measurable annual goals set out in the child's IEP and to participate, as appropriate, in the general education curriculum.

4. The local educational agency shall administer tests and other evaluation materials, in accordance with subsection B of this section, as may be needed to produce the data identified in subdivision 3 of this subsection. (34 CFR 300.305(c))

5. Requirements if additional data are not needed: (34 CFR 300.305(d))

a. If the team determines that no additional data are needed to determine whether the child continues to be a child with a disability, the local educational agency shall provide the child's parent(s) with written prior notice, including information regarding:

(1) The determination and the reasons for it; and

(2) The right of the parent(s) to request an evaluation to determine whether the child continues to be a child with a disability and to determine the child's educational needs.

b. The local educational agency is not required to conduct the evaluation to gather additional information to determine whether the child continues to have a disability and to determine the child's educational needs, unless the child's parent(s) requests the evaluation for these specific purposes.

c. The child's parent(s) has the right to resolve the issue through the dispute resolution options of mediation or due process as described in this chapter.

6. This process is considered the evaluation if no additional data are needed.

G. Parental consent for reevaluation.

1. Informed parental consent is required before conducting any reevaluation of a child with a disability.

a. If the local educational agency can demonstrate that it has taken reasonable measures to obtain consent and the child's parent(s) has failed to respond, the local educational agency shall proceed as if consent has been given by the parent(s). Reasonable measures include providing notice to the parent(s) in writing (or by telephone or in person with proper documentation).

b. If the parent(s) refuses consent, the local educational agency may continue to pursue those evaluations by using due process or mediation procedures. The local educational agency does not violate its obligation under this chapter if it declines to pursue the reevaluation.

2. Parental consent is not required before:

a. Review of existing data as part of an evaluation or reevaluation;

b. A teacher's or related service provider's observations or ongoing classroom evaluations; or

c. Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

3. If a parent of a child who is home-instructed or home-tutored, or who is placed in a private school by the parents at their own expense, does not provide consent for reevaluation, or the parent(s) fails to respond to a request to provide consent, the local educational agency may not use mediation or due process to pursue the reevaluation. (34 CFR 300.300(c) and (d))

In this instance, the local school division is not required to consider the child as eligible for equitable services under the provisions of 8VAC20-81-150 for parentally placed students.

H. Timelines for reevaluations.

1. The reevaluation process, including eligibility determination, shall be initiated in sufficient time to complete the process prior to the third anniversary of the date eligibility was last determined.

2. If a reevaluation is conducted for purposes other than the child's triennial, the reevaluation process, including eligibility determination, shall be completed in 65 business days from the date of the parent's consent to the evaluation.

3. The parent and eligibility group may agree in writing to extend the 65-day timeline to obtain additional data that cannot be obtained within the 65 business days.

I. The LEA is not required to evaluate a child with a disability who graduates with a standard diploma or advanced studies diploma. Since graduation is a change in placement, the local educational agency is required to provide the parent with prior written notice in accordance with 8VAC20-81-170. (34 CFR 300.305(e)(2))

8VAC20-81-80. Eligibility.

A. Each local educational agency shall establish procedures to ensure that the decision regarding eligibility for special education and related services and educational needs is made in accordance with the provisions of this section.

B. The determination that a child is eligible for special education and related services shall be made on an individual basis by a group as designated in subdivision C 2 of this section.

C. Upon completion of the administration of assessments and other evaluation materials or after determining that additional data are not needed, a group of qualified professionals and the parent(s) of the child shall determine whether the child is, or continues to be, a child with a disability and the educational needs of the child. If a determination is made that a child has a disability and needs special education and related services, an IEP shall be developed in accordance with the requirements of 8VAC20-81-110. (34 CFR 300.306, 34 CFR 300.308)

1. The determination of whether a child is a child with a disability is made by the child's parent(s) and a group that is collectively qualified to:

a. Conduct, as appropriate, individual diagnostic assessments in the areas of speech and language, academic achievement, intellectual development and social-emotional development;

b. Interpret assessment and intervention data, and apply critical analysis to those data; and

c. Develop appropriate educational and transitional recommendations based on the assessment data,

2. The eligibility group composition.

Regulations

a. The group may be an IEP team, as defined in 8VAC20-81-110, as long as the above requirements and notice requirements of 8VAC20-81-170 are met.

b. The group shall include, but not be limited to:

(1) Local educational agency personnel representing the disciplines providing assessments;

(2) The special education administrator or designee;

(3) The parent(s);

(4) A special education teacher;

(5) The child's general education teacher or if the child does not have a general education teacher, a general education teacher qualified to teach a child of the child's age; or for a child of less than school age, an individual qualified to teach a child of the child's age; and

(6) At least one person qualified to conduct individual diagnostic examinations of children, such as school psychologist, speech-language pathologist, or remedial reading teacher.

D. Procedures for determining eligibility and educational need. (34 CFR 300.306 through 34 CFR 300.311)

1. In interpreting evaluation data for the purpose of determining if a child is a child with a disability and determining the educational needs of the child, the local educational agency shall:

a. Draw upon information from a variety of sources, including aptitude and achievement tests, parent input and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

b. Ensure that information from all these sources is documented and carefully considered.

2. The group shall provide procedural safeguards in determining eligibility and in ensuring the confidentiality of records.

3. Observation.

a. At least one member of the eligibility group other than the child's current teacher, who is trained in observation, shall observe the child and the learning environment, including the general education classroom setting, to document academic performance and behavior in the areas of difficulty. In the case of a child of less than school age or out of school, a group member shall observe the child in an environment appropriate for a child of that age.

b. The local educational agency shall:

(1) Have at least one member of the eligibility team conduct an observation of the child's academic

performance in the general education classroom after the child has been referred for an evaluation and parental consent has been obtained consistent with the requirements of 8VAC20-81-170.

(2) Ensure that the child is observed in the child's learning environment (including the general education classroom setting) to document the child's academic performance and behavior in the areas of difficulty.

(3) Include information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation.

4. A child shall not be determined to be eligible under this chapter if the child does not otherwise meet the eligibility criteria, and the determinant factor is:

a. Lack of appropriate instruction in reading, including the essential components of reading instruction:

(1) Phonemic awareness,

(2) Phonics,

(3) Vocabulary development,

(4) Reading fluency, including oral reading skills, and

(5) Reading comprehension strategies;

b. Lack of appropriate instruction in math; or

c. Limited English proficiency.

5. The documentation of the determination of eligibility shall include a statement of:

a. Whether the child has a specific disability.

b. The basis for making the determination including an assurance that the determination has been made in accordance with the provisions of this section regarding determining eligibility and educational need.

c. The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning.

d. The educationally relevant medical findings, if any.

e. The instructional strategies used and the student-centered data collected if a response to scientific, research-based intervention process was implemented and whether the child does not achieve commensurate with the child's age. This document shall also include:

(1) The local educational agency's notification to the parent of the Virginia Department of Education's policies regarding the amount and nature of student performance data that would be collected;

(2) The strategies that were used to increase the child's rate of learning; and

(3) The parent's right to request an evaluation.

f. For identification of learning disabilities, whether there are strengths and weaknesses in performance or achievement or both, or there are strengths and weaknesses in performance or achievement or both relative to intellectual development in one or more of the areas listed in subsection K of this section.

6. The eligibility group shall consider, as part of the evaluation, data that demonstrates that prior to, or as part of the referral process, the child was provided appropriate high-quality, researched-based instruction in general education settings, consistent with §1111(b)(8)(D) and (E) of the ESEA, including that the instruction was delivered by qualified personnel. There shall be data-based documentation that repeated assessments of achievement at reasonable intervals, reflecting that formal assessment of student progress during instruction was provided to the child's parents.

7. The eligibility group shall work toward consensus. If the group does not reach consensus and the decision does not reflect a particular member's conclusion, then the group member shall submit a written statement presenting that member's conclusions.

8. The local educational agency shall obtain written parental consent for the initial eligibility determination. Thereafter, written parental consent shall be secured for any change in categorical identification in the child's disability.

9. The eligibility group shall have a written summary that consists of the basis for making its determination as to the eligibility of the child for special education and related services. The written summary shall include any written statement from a member whose conclusion differs from the other member's determination. The summary statement may include other recommendations. The written summary shall be maintained in the child's scholastic record.

10. The written summary shall be forwarded to the IEP team, including the parent, upon determination of eligibility. The summary statement may include other recommendations.

11. With reevaluations, if the eligibility group determines that there is not a change to the child's eligibility for special education and related services, and educational needs, the IEP team is not required to convene, unless the parent requests that the IEP team meets.

E. Nothing in this chapter requires that children be identified by their disability on IEPs, local educational agency communications to parents regarding eligibility determinations, or other similar communications to parents. For such communications, local educational agencies shall identify that each child has a disability under this chapter and

by reason of that disability needs special education and related services, and is regarded as a child with a disability.

F. Eligibility for related services. A child with a disability shall be found eligible for special education in order to receive related services. Once a child is found eligible for special education, decisions about the need for related services shall be made by the IEP team. An evaluation may be conducted as determined by the IEP team. (34 CFR 300.34 and 34 CFR 300.306(c)(2))

G. Two-year-old children previously served by Part C. A child, aged two, previously participating in early intervention services assisted under Part C of the Act, shall meet the requirements of this chapter to be determined eligible under Part B of the Act. For a child served by Part C after age two, and whose third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP will begin for the child. (34 CFR 300.124)

H. The characteristics of each of the disabilities listed in this section shall have an adverse effect on educational performance and make it necessary for the child to have special education to address the needs of the child that result from the child's disability and to ensure access to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. For children with developmental delay, ensuring access to the general curriculum means ensuring the child's access to the general educational activities for this age group.

I. The Virginia Department of Education adopts criteria for determining whether a child has a disability by using the applicable determination of eligibility criteria for all children suspected of having a disability and does not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a disability. (34 CFR 300.307)

J. The Virginia Department of Education permits each local educational agency to use a process for determining whether a child has a disability based on the child's response to scientific, research-based intervention and permits each local educational agency to use other alternative research-based intervention and procedures. (34 CFR 300.307)

K. Eligibility of a child with a specific learning disability. (34 CFR 300.307 and 34 CFR 300.311)

1. The group may determine that a child has a specific learning disability if:

a. The child does not achieve adequately for the child's age or to meet Virginia-approved grade-level standards in one or more of the following areas when provided with learning experiences and instruction appropriate for the child's age or Virginia-approved grade-level standards:

Regulations

- (1) Oral expression;
- (2) Listening comprehension;
- (3) Written expression;
- (4) Basic reading skills;
- (5) Reading fluency skills;
- (6) Reading comprehension;
- (7) Mathematical calculations; or
- (8) Mathematical problem solving.

b. The child does not make sufficient progress to meet age or Virginia-approved grade-level standards in one or more of the areas identified in subdivision 1 a of this subsection when using a process based on the child's response to scientific, research-based intervention; or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, Virginia-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 8VAC20-81-70; and

c. The group determines that its findings under subdivision 1 a and b of this subsection are not primarily the result of:

- (1) A visual, hearing, or motor impairment;
- (2) Mental retardation;
- (3) Emotional disturbance;
- (4) Environmental, cultural, or economic disadvantage; or
- (5) Limited English proficiency.

2. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; mental retardation; or environmental, cultural, or economic disadvantage. A specific learning disability:

- a. Is not the result of a lack of appropriate instruction in reading or math;
- b. Data demonstrates that prior to, or as a part of the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
- c. Data-based documentation reflecting student progress was collected.

L. Eligibility as a child with autism.

1. Any of the Pervasive Developmental Disorders, such as Autistic Disorder, Asperger's Disorder, Rhett's Disorder,

Childhood Disintegrative Disorder, Pervasive Developmental Disorder – Not Otherwise Specified including Atypical Autism as indicated in diagnostic references, such as the Diagnostic and Statistical Manual of Mental Disorders (DSM), may be included under the eligibility category of autism. Students with autism demonstrate restricted repetitive and stereotyped patterns of behavior, interests, and activities such as encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus, apparently inflexible adherence to specific, nonfunctional routines or rituals, stereotyped and repetitive motor mannerisms (i.e., hand or finger flapping or twisting, or complex whole-body movements), persistent preoccupation with parts of objects.

2. A minimum of six characteristics from the following communication and social interaction areas shall be present to be considered for eligibility.

a. One or more impairments in communication, such as delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime) in individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others, stereotyped and repetitive use of language or idiosyncratic language, or lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level.

b. Two or more impairments in social interaction, such as marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction, failure to develop peer relationships appropriate to developmental level, a lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (i.e., by a lack of showing, bringing, or pointing out objects of interest), or lack of social or emotional reciprocity are noted. Delay(s) or abnormal functioning in social interaction, language as used in social communication, or symbolic or imaginative play, with onset prior to age three are also evident.

M. Eligibility as a child with deafness.

1. Deafness may apply to a documented bilateral hearing loss (sensorineural, or mixed conductive and sensorineural), a fluctuating or a permanent hearing loss, documented auditory dyssynchrony (auditory neuropathy), or cortical deafness. This hearing loss results in qualitative impairments in communication/educational progress due to delays in one or more of the following: expressive/receptive vocabulary development, expressive/receptive language development (in English/primary language of the family or in sign language), speech development, written English skills.

2. Students suspected of being deaf shall have an evaluation of the student's language and communication needs and opportunities for direct communications with peers and professional personnel in the student's language and communication mode.

N. Eligibility as a child with developmental delay. (34 CFR 300.111(b))

1. The local educational agency may include developmental delay as one of the disability categories when determining whether a preschool child, aged two by September 30 to five, inclusive, is eligible under this chapter.

2. Other disability categories may be used for any child with a disability aged two to five, inclusive.

3. Developmental delay may include a child who has an established physical or mental condition that has a high probability of resulting in a developmental delay.

O. Eligibility as a child with hearing impairment. Students suspected of having a hearing impairment shall have an evaluation of the student's language and communication needs and opportunities for direct communications with peers and professional personnel in the student's language and communication mode.

P. Eligibility as a child with mental retardation. The terms intellectual disability and cognitive impairment may be used to describe this category. The child exhibits significantly impaired intellectual functioning, which is two or more standard deviations below the mean, with consideration given to the standard error of measurement for the test, on an individually administered, standardized measure of intelligence. The child also concurrently exhibits significantly impaired adaptive behavior in the home or community as determined by a composite score on an individual standardized instrument that measures two standard deviations or more below the mean. Developmental history (birth through 18) indicates significant impairment in cognitive/intellectual abilities and a current demonstration of significant impairment is present.

Q. Eligibility as a child with other health impairment.

1. Attention-deficit/hyperactivity disorder as indicated in diagnostic references, such as the Diagnostic and Statistical Manual of Mental Disorders (DSM), involve the following characteristics.

a. The symptoms do not occur exclusively during the course of a Pervasive Developmental Disorder, Schizophrenia, or other Psychotic Disorder and are not better accounted for by another mental disorder (e.g., Mood Disorder, Anxiety Disorder, Dissociative Disorder, or a Personality Disorder). The child shall exhibit six or more of the following symptoms of inattention that have

persisted for at least six months to a degree that is maladaptive and inconsistent with developmental level:

(1) Often fails to give close attention to details or makes careless mistakes in schoolwork, work, or other activities;

(2) Often has difficulty sustaining attention in tasks or play activities;

(3) Often does not seem to listen when spoken to directly;

(4) Often does not follow through on instructions and fails to finish schoolwork, chores, or duties in the workplace (not due to oppositional behavior or failure to understand instructions);

(5) Often has difficulty organizing tasks and activities;

(6) Often avoids, dislikes, or is reluctant to engage in tasks that require sustained mental effort (such as schoolwork or homework);

(7) Often loses things necessary for tasks or activities (e.g., toys, school assignments, pencils, books, or tools);

(8) Often easily distracted by extraneous stimuli;

(9) Often forgetful in daily activities; or

b. A child shall exhibit six or more of the following symptoms of hyperactivity-impulsivity and have persisted for at least six months to a degree that is maladaptive and inconsistent with developmental level:

(1) Often fidgets with hands, feet, or squirm in seat;

(2) Often leaves seat in classroom or in other situations in which remaining seated is expected;

(3) Often runs about or climbs excessively in situations in which it is inappropriate (in adolescents or adults, may be limited to subjective feelings of restlessness);

(4) Often has difficulty playing or engaging in leisure activities quietly;

(5) Is often "on the go" or often acts as if "driven by a motor" and often talks excessively; impulsivity;

(6) Often blurts out answers before questions have been completed;

(7) Often has difficulty awaiting turn; and

(8) Often interrupts or intrudes on others; or

c. If criteria for combined type-inattention and hyperactivity are met for the past six months. Some hyperactive-impulsive or inattentive symptoms that caused the impairment were present before age 7 years. Some impairment from the symptoms is present in two or more settings (e.g., at school, or work, and at home).

Regulations

2. Eligibility may also apply to children with Tourette Syndrome or acute health problems such as those found in the definition of "Other health impairment" at 8VAC20-81-10.

Eligibility criteria includes limited strength, vitality, or alertness and other elements as described in the definition of "Other health impairment" at 8VAC20-81-10.

R. Eligibility as a child with speech or language impairment.

1. The communication disorder results in a significant discrepancy from typical communication skills in one or more of the following areas; fluency, impaired articulation, expressive or receptive language impairment, or voice impairment. Information from instruments that are culturally and linguistically appropriate, including standardized and criterion-referenced measures, shall be used in conjunction with information from classroom observations to determine the severity of the communication impairment. Children shall not be identified as children having a speech or language impairment if the area of concern is primarily the result of socio-cultural dialect, delays/differences associated with acquisition of English as a second language, or within the purview of established norms for articulation and language development.

2. Speech language pathology services may be special education or a related service.

S. Eligibility as a child with a visual impairment.

1. The child evidences at least one of the following characteristics.

a. Visual acuity in the better eye with best possible correction of:

(1) 20/200 or less at distance and/or near is considered blindness.

(2) Better than 20/200 but worse than 20/70 at distance and/or near is considered visual impairment.

b. Visual field restriction in the better eye:

(1) Remaining visual field of 20 degrees or less is considered blindness.

(2) Remaining visual field of 70 degrees or less but better than 20 degrees is considered visual impairment.

2. Special conditions, include, but are not limited to, oculomotor apraxia, cortical visual impairment, and/or a progressive loss of vision (documented medically and educationally), which may in the future, affect the student's ability to learn visually or a functional vision loss where field and acuity deficits alone may not meet the aforementioned criteria.

3. Students suspected of being blind or having a visual impairment, shall have an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the student's future needs for instruction in Braille or the use of Braille.

T. Children found not eligible for special education.

1. Information relevant to instruction for a child found not eligible for special education shall be provided to the child's teachers or any appropriate committee. Parental consent to release information shall be secured for children who are placed by their parents in private schools that are not located in the local educational agency of the parent's residence. (34 CFR 300.622)

2. If the school division decides that a child is not eligible for special education and related services, prior written notice, in accordance with 8VAC20-81-170 shall be given to the parent(s) including the parent(s) right to appeal the decision through the due process hearing procedures. (34 CFR 300.507)

8VAC20-81-90. Termination of special education and related services.

A. A local educational agency shall evaluate a child with a disability in accordance with 8VAC20-81-70 before determining that the child is no longer a child with a disability under this chapter. Evaluation is not required before the termination of eligibility due to graduation with a standard or advanced studies high school diploma or reaching the age of 22. (34 CFR 300.305(e))

B. The IEP team shall terminate the child's eligibility for special education and related services in the following areas:

1 Termination of special education services occurs if the team determines that the child is no longer a child with a disability who needs special education and related services.

2. A related service may be terminated during an IEP meeting without determining that the child is no longer a child with a disability who is eligible for special education and related services. The IEP team making the determination shall include local educational agency personnel representing the specific related services discipline being terminated.

3. Prior to any partial or complete termination of special education and related services, the local educational agency shall comply with the prior written notice requirements of 8VAC20-81-170 C, but parental consent is not required.

C. If the parent(s) revokes consent for the child to continue to receive special education and related services, the local educational agency shall follow the procedures in 8VAC20-81-80 to terminate the child's eligibility or use other measures as necessary to ensure that parental revocation of consent will

not result in the withdrawal of a necessary free appropriate public education for the child. (34 CFR 300.9 and 34 CFR 300.305(e))

D. Summary of academic achievement and functional performance. (34 CFR 300.305(e)(3))

1. For a child whose eligibility terminates due to graduation with a standard or advanced studies high school diploma or reaching the age of 22, the local educational agency shall provide the child with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.

2. If a child exits school without graduating with a standard or advanced studies high school diploma or reaching the age of 22, including if the child receives a general educational development (GED) credential or an alternative diploma option, the local educational agency may provide the child with a summary of academic achievement and functional performance when the child exits school. However, if the child resumes receipt of educational services prior to exceeding the age of eligibility, the local educational agency shall provide the child with an updated summary when the child exits, or when the child's eligibility terminates due to graduation with a standard or advanced studies high school diploma or reaching the age of 22.

8VAC20-81-100. Free appropriate public education.

A. Age of eligibility.

1. A free appropriate public education shall be available to all children with disabilities who need special education and related services, aged two to 21, inclusive, who meet the age of eligibility requirements in 8VAC20-81-10 and who reside within the jurisdiction of each local educational agency. This includes children with disabilities who are in need of special education and related services even though they have not failed or been retained in a course or grade and are advancing from grade to grade, and students who have been suspended or expelled from school in accordance with the provisions of 8VAC20-81-160. The Virginia Department of Education has a goal of providing full educational opportunity to all children with disabilities aged birth through 21, inclusive, by 2015. (§22.1-213 of the Code of Virginia; 34 CFR 300.101 and 34 CFR 300.109)

a. The services provided to the child under this chapter shall address all of the child's identified special education and related services needs.

b. The services and placement needed by each child with a disability to receive a free appropriate public education

shall be based on the child's unique needs and not on the child's disability.

2. Exceptions. The obligation to make a free appropriate public education to all children with disabilities does not apply to: (34 CFR 300.102(a))

a. Children with disabilities who have graduated from high school with a standard or advanced studies high school diploma. This exception does not apply to age-eligible students who have graduated but have not been awarded a standard or advanced studies high school diploma, or to those students who have been awarded a general educational development (GED) credential.

b. Children with disabilities, aged 18 to 21, inclusive, who, if in their last educational placement prior to their incarceration in an adult correctional facility, were not identified as being a child with a disability and did not have an IEP. This exception does not apply to children with disabilities, aged 18 to 21, inclusive, who had been identified as children with disabilities and had received services in accordance with their IEPs, but who left school prior to their incarceration or did not have IEPs in their last educational setting but who had actually been identified as children with disabilities under this chapter.

c. Children with disabilities who are eligible under IDEA Part B, Subpart H, but who receive early intervention services under IDEA Part C.

B. A free appropriate public education shall be available to children with disabilities who reside within a school division but do not hold a valid U.S. citizenship or a student visa.

C. Program options. Each local school division shall take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to children without disabilities in the area served by the local educational agency, including art, music, industrial arts, consumer and homemaking education, and vocational education. (34 CFR 300.110)

D. Residential placement. If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including nonmedical care and room and board, shall be at no cost to the parents of the child. (34 CFR 300.104)

E. Assistive technology devices.

1. Each local educational agency shall ensure that the following are functioning properly, including completing routine checks:

a. Hearing aids worn in school by children with hearing impairments, including deafness; and

b. The external components of surgically implanted devices.

Regulations

2. A local educational agency is not responsible for the postsurgical maintenance, programming, or replacement of a medical device that has been surgically implanted (or of an external component of the surgically implanted medical device.) (34 CFR 300.34(b) and 34 CFR 300.113)

F. Availability of assistive technology. (34 CFR 300.105)

1. Each local educational agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in 8VAC20-81-10, are made available to a child with a disability if required as part of the child's:

- a. Special education;
- b. Related services; or
- c. Supplementary aids and services.

2. On a case-by-case basis, the use of school-purchased or leased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive a free appropriate public education.

3. Local educational agencies are not required to provide personal devices, including eyeglasses or hearing aids that the child requires, regardless of whether the child is attending school, unless the IEP team determines that the device is necessary for the child to receive FAPE.

G. Transportation. (§§22.1-221 and 22.1-347 of the Code of Virginia; 34 CFR 300.107)

1. Each child with a disability, aged two to 21, inclusive, placed in an education program, including private special education day or residential placements, by the local school division shall be entitled to transportation to and from such program at no cost if such transportation is necessary to enable such child to benefit from educational programs and opportunities. Children with disabilities and children without disabilities shall share the same transportation unless a child's IEP requires specialized transportation.

2. If the IEP team determines that a child with a disability requires accommodations or modifications to participate in transportation, the accommodations or modifications shall be provided in the least restrictive environment. Transportation personnel may be on the IEP team or be consulted before any modifications or accommodations are written into the student's IEP to ensure that the modifications and accommodations do not violate any state or federal standard or any nationally recognized safety practices.

3. A local educational agency shall ensure that a child with a disability is provided a commute to and from an education program that is comparable in length to the commute provided to children without disabilities, unless

the child's IEP team determines that a longer or shorter commute is necessary to ensure the child receives a free appropriate public education.

4. If a local educational agency enters an agreement with another local educational agency for the provision of special education or related services for a child with a disability, such child shall be transported to and from such program at no cost to the parent(s).

5. If a child with a disability is placed in the Virginia School for the Deaf and the Blind at Staunton or the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton, the Virginia school shall be responsible for the provision of transportation services. When such children are educated as day students, the local school division shall be responsible for the provision of transportation services to and from school.

H. Nonacademic and extracurricular services and activities. (34 CFR 300.107 and 34 CFR 300.117)

1. Each local educational agency shall take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

2. Nonacademic and extracurricular services and activities may include but not be limited to counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the local educational agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the local educational agency and assistance in making outside employment available.

I. Physical education. (34 CFR 300.108)

1. General. Physical education services, specially designed if necessary, shall be made available to every child with a disability receiving a free appropriate public education, unless the local educational agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grade.

2. Regular physical education. Each child with a disability shall be afforded the opportunity to participate in the regular physical education program available to children without disabilities, unless:

- a. The child is enrolled full time in a separate facility; or
- b. The child needs specially designed physical education, as prescribed in the child's IEP that cannot be provided in the regular physical education program.

3. Special physical education. If specially designed physical education is prescribed in a child's IEP, the local educational agency responsible for the education of that child shall provide the services directly or make arrangements for those services to be provided through other public or private programs.

4. Education in separate facilities. The local educational agency responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services in compliance with subdivision 3 of this subsection.

J. Extended school year services. (34 CFR 300.106)

1. Each local educational agency shall ensure that extended school year services, including transportation to and from such services, are available as necessary to provide a free appropriate public education consistent with subdivision 2 of this subsection.

2. Extended school year services shall be provided only if a child's IEP team determines on an individual basis in accordance with this chapter that the services are necessary for the provision of a free appropriate public education to the child, because the benefits a child with a disability gains during the regular school year will be significantly jeopardized if extended school year services are not provided.

3. In implementing the requirements of this section, a local educational agency may not:

- a. Limit extended school year services to particular categories of disability;
- b. Unilaterally limit the type, amount, or duration of those services; or
- c. Limit the provision of extended school year services to only the summer.

K. Children with disabilities in public charter schools. (34 CFR 300.209)

1. Children with disabilities who attend charter schools shall be served by the local school division in the same manner as children with disabilities in its other schools, including the provision of supplementary and related services on site at the charter school to the same extent to which the LEA provides such services on the site to its other public schools.

2. The local school division shall ensure that all requirements of this chapter are met.

L. Length of school day. School-aged students with disabilities shall be provided a school day comparable in length to the day provided to school-aged students without disabilities unless their IEP specifies otherwise.

M. Methods and payments. (34 CFR 300.103)

1. The Virginia Department of Education may use whatever state, local, federal, and private sources of support are available to meet the requirements of this part.

2. Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

3. The Virginia Department of Education will ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

N. Disability harassment. Each local educational agency shall have in effect policies that prohibit harassment to children with disabilities. (28 CFR 35.149 and 34 CFR 104.4)

8VAC20-81-110. Individualized education program.

A. Responsibility. The local educational agency shall ensure that an IEP is developed and implemented for each child with a disability served by that local educational agency, including a child placed in a private special education school by: (34 CFR 300.112)

- 1. A local school division; or
- 2. A noneducational placement by a Comprehensive Services Act team that includes the school division. The local school division's responsibility is limited to special education and related services.

B. Accountability.

1. At the beginning of each school year, each local educational agency shall have an IEP in effect for each child with a disability within its jurisdiction, with the exception of children placed in a private school by parents when a free appropriate public education is not at issue. (34 CFR 300.323(a))

2. Each local educational agency shall ensure that an IEP: (34 CFR 300.323(c))

- a. Is in effect before special education and related services are provided to an eligible child;
- b. Is developed within 30 calendar days of the date of the initial determination that the child needs special education and related services;
- c. Is developed within 30 calendar days of the date the eligibility group determines that the child remains eligible for special education and related services following reevaluation, if the IEP team determines that changes are needed to the child's IEP, or if the parent requests it; and

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d. Is implemented as soon as possible following parental consent to the IEP, not to exceed 30 calendar days, unless the local educational agency documents the reasons for the delay.

3. Each local educational agency shall ensure that: (34 CFR 300.323(d))

a. The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and

b. Teachers and providers are informed of:

(1) Their specific responsibilities related to implementing the child's IEP; and

(2) The specific accommodations, modifications, and supports that shall be provided for the child in accordance with the IEP.

4. Each local educational agency is responsible for initiating and conducting meetings to develop, review, and revise the IEP of a child with a disability.

5. Each local educational agency shall ensure that the IEP team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals are being achieved and to revise its provisions, as appropriate, to address: (34 CFR 300.324(b))

a. Any lack of expected progress toward the annual goals and in the general curriculum, if appropriate;

b. The results of any reevaluation conducted under this chapter;

c. Information about the child provided to or by the parent(s);

d. The child's anticipated needs; or

e. Other matters.

6. Each local educational agency shall provide special education and related services to a child with a disability in accordance with the child's IEP. (34 CFR 300.350 (a))

7. This chapter does not require that any local educational agency, teacher, or other person to be held accountable if a child does not achieve the growth projected in the annual goals, including benchmarks or objectives. However, the Virginia Department of Education and local educational agencies are not prohibited from establishing their own accountability systems regarding teacher, school, or agency performance.

8. Nothing in this section limits a parent's right to ask for revisions of the child's IEP if the parent feels that the efforts required by this chapter are not being met.

If the local educational agency considers the parent's request unreasonable and refuses to meet, the local educational agency shall advise the parent in writing of the reasons for denying the parent's request and provide the parent information on this chapter's dispute resolution options.

9. To the extent possible, the local educational agency shall encourage the consolidation of reevaluation and IEP team meetings for the child. (34 CFR 300.324(a)(5))

10. In making changes to a child's IEP after the annual IEP team meeting for the school year, the parent(s) and the local educational agency may agree not to convene an IEP team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. (34 CFR 300.324(a)(4) and (6))

a. If changes are made to the child's IEP, the local educational agency shall ensure that the child's IEP team is informed of those changes.

b. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.

c. This meeting is not a substitute for the required annual IEP meeting.

C. IEP team.

1. General. The local educational agency shall ensure that the IEP team for each child with a disability includes: (34 CFR 300.321(a) and (c))

a. The parent(s) of the child;

b. Not less than one regular education teacher of the child (if the child is or may be participating in the regular educational environment);

c. Not less than one special education teacher of the child or, if appropriate, not less than one special education provider of the child. For a child whose only disability is speech-language impairment, the special education provider shall be the speech-language pathologist;

d. A representative of the local educational agency who is:

(1) Qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities;

(2) Knowledgeable about the general education curriculum; and

(3) Knowledgeable about the availability of resources of the local education agency. A local educational agency may designate another member of the IEP team to serve simultaneously as the agency representative if the individual meets the above criteria;

e. An individual who can interpret the instructional implications of evaluation results. This individual may be a member of the team serving in another capacity, other than the parent of the child;

f. At the discretion of the parent(s) or local educational agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate. The determination of knowledge or special expertise of any individual shall be made by the party (parent(s) or local educational agency) who invited the individual to be a member of the team; and

g. Whenever appropriate, the child.

2. The local educational agency determines the school personnel to fill the roles of the required IEP team members in subdivisions 1 b through 1 e of this subsection.

3. Secondary transition service participants. (34 CFR 300.321(b))

a. The local educational agency shall invite a student with a disability of any age to attend the student's IEP meeting if a purpose of the meeting will be the consideration of:

(1) The student's postsecondary goals;

(2) The needed transition services for the student; or

(3) Both.

b. If the student does not attend the IEP meeting, the local educational agency shall take other steps to ensure that the student's preferences and interests are considered.

c. To the extent appropriate and with the consent of the parent(s) or a child who has reached the age of majority, the local educational agency shall invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

If an agency invited to send a representative to a meeting does not do so, the local educational agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

4. Part C transition participants. In the case of a child who was previously served under Part C of the Act, the local educational agency shall, at the parent's(s)' request, invite the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services. (34 CFR 300.321(f))

D. IEP team attendance. (34 CFR 300.321(e))

1. A required member of the IEP team described in subdivisions C 1 b through C 1 e of this section is not

required to attend an IEP team meeting, in whole or in part, if the parent and the local educational agency agree, in writing, that the attendance of this member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

2. A required member of the IEP team may be excused from attending the IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of curriculum or related services, if:

a. The parent and the local educational agency consent in writing to the excusal; and

b. The member submits, in writing, to the parent and the IEP team input into the development of the IEP prior to the meeting.

E. Parent participation.

1. Each local educational agency shall take steps to ensure that one or both of the parents of the child with a disability are present at each IEP meeting or are afforded the opportunity to participate including: (34 CFR 300.322(a))

a. Notifying the parent(s) of the meeting early enough to ensure that they will have an opportunity to attend; and

b. Scheduling the meeting at a mutually agreed on time and place.

2. Notice. (34 CFR 300.322(b))

a. General notice. The notice given to the parent(s):

(1) May be in writing, or given by telephone or in person with proper documentation;

(2) Shall indicate the purpose, date, time, and location of the meeting, and who will be in attendance; and

(3) Shall inform the parent(s) of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child.

b. Additional notice requirements are provided if transition services are under consideration.

(1) For Part C transition, the notice shall inform the parents of the provisions relating to the participation of the Part C service coordinator or other representative(s) of the Part C system.

(2) For secondary transition, the notice shall also:

(a) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child;

(b) Indicate that the local educational agency will invite the student; and

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(c) Identify any other agency that will be invited to send a representative.

3. If neither parent can attend, the local educational agency shall use other methods to ensure parent participation, including individual or conference telephone calls and audio conferences. (34 CFR 300.322(c))

If the local educational agency uses an alternative means of meeting participation that results in additional costs, the local educational agency is responsible for those costs.

4. A meeting may be conducted without a parent(s) in attendance if the local educational agency is unable to convince the parent(s) that they should attend. In this case, the local educational agency shall have a record of the attempts to arrange a mutually agreed on time and place, such as: (34 CFR 300.322(d))

a. Detailed records of telephone calls made or attempted and the results of those calls;

b. Copies of correspondence sent to the parent(s) and any responses received; or

c. Detailed records of visits made to the parent's(s)' home or place of employment and the results of those visits.

5. The local educational agency shall take whatever action is necessary to ensure that the parent(s) understand the proceedings at the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. (34 CFR 300.322(e))

6. Audio and video recording of IEP meetings.

a. The local educational agency shall permit the use of audio recording devices at IEP meetings. The parent(s) shall inform the local educational agency before the meeting in writing, unless the parents cannot write in English, that they will be audio recording the meeting. If the parent(s) does not inform the local educational agency, the parent(s) shall provide the local educational agency with a copy of the audio recording. The parent or parents shall provide their own audio equipment and materials for audio recording. If the local educational agency audio records the meetings or receives a copy of an audio recording from the parent(s), the audio recording becomes part of the child's educational record.

b. The local educational agency may have policies that prohibit, limit or otherwise regulate the use of:

(1) Video recording devices at IEP meetings; or

(2) Audio or video recording devices at meetings other than meetings that are for the purposes of developing, reviewing, revising the child's IEP or reviewing matters related to discipline provisions under 8VAC20-81-160.

c. These policies shall:

(1) Stipulate that the recordings become part of the child's educational record;

(2) Ensure that the policy is uniformly applied; and

(3) If the policy limits or prohibits the use of the devices, the policy shall provide for exceptions if they are necessary to ensure that the parent(s) understands the IEP, the special education process, or to implement other parental rights guaranteed under this chapter.

7. At the IEP meeting, the IEP team shall provide the parent(s) of a child with a disability with a written description of the factors in subdivisions F 1 and F 2 of this section that will be considered during the IEP meeting. The description shall be written in language understandable by the general public and provided in the native language of the parent(s) or other mode of communication used by the parent(s), unless it is clearly not feasible to do so.

8. The local educational agency shall give the parent(s) a copy of the child's IEP at no cost to the parent(s) at the IEP meeting, but no later than 10 calendar days from the date of the IEP meeting. (34 CFR 300.322(f))

F. Development, review, and revision of the IEP. (34 CFR 300.324(a))

1. In developing each child's IEP, the IEP team shall consider:

a. The strengths of the child;

b. The concerns of the parent(s) for enhancing the education of their child;

c. The results of the initial or most recent evaluation of the child; and

d. The academic, developmental, and functional needs of the child.

2. The IEP team also shall: (34 CFR 300.324(a))

a. In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions, strategies, and supports to address the behavior;

b. In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

c. In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the child's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the child;

d. Consider the communication needs of the child;

e. In the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

f. Consider whether the child requires assistive technology devices and services.

3. If, in considering the special factors, the IEP team determines that a child needs a particular device or service, including an intervention, accommodation, or other program modification in order for the child to receive a free appropriate public education, the IEP team shall include a statement to that effect in the child's IEP. (34 CFR 300.324(b)(2))

4. The regular education teacher of a child with a disability, as a member of the IEP team, shall participate, to the extent appropriate, in the development, review, and revision of the child's IEP, including assisting in the determination of: (34 CFR 300.324(a)(3))

a. Appropriate positive behavioral interventions and supports and other strategies for the child; and

b. Supplementary aids and services, accommodations, program modifications or supports for school personnel that will be provided for the child.

5. Nothing in this section shall be construed to require: (34 CFR 300.320(d))

a. The IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP; or

b. That additional information be included in the child's IEP beyond what is explicitly required in this chapter.

6. The IEP team shall consider all factors identified under a free appropriate public education in 8 VAC 20-81-100, as appropriate, and work toward consensus. If the IEP team cannot reach consensus, the local educational agency shall provide the parent(s) with prior written notice of the local educational agency's proposals or refusals, or both, regarding the child's educational placement or provision of a free appropriate public education in accordance with 8VAC20-81-170.

G. Content of the individualized education program. The IEP for each child with a disability shall include:

1. A statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general curriculum or, for preschool

children, as appropriate, how the disability affects the child's participation in appropriate activities. (34 CFR 300.320(a)(1))

a. The statement shall be written in objective measurable terms, to the extent possible. Test scores, if appropriate, shall be self-explanatory or an explanation shall be included.

b. The present level of performance shall directly relate to the other components of the IEP.

2. A statement of measurable annual goals, including academic and functional goals designed to: (34 CFR 300.320(a)(2))

a. Meet the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum, or for preschool children, as appropriate, to participate in appropriate activities; and

b. Meet each of the child's other educational needs that result from the child's disability.

3. For children with disabilities who take alternate assessments aligned to alternate achievement standards, description of benchmarks or short-term objectives. (34 CFR 300.320(a)(2))

The IEP team may determine that benchmarks or short-term objectives are required for other children with disabilities in order for the children to benefit educationally.

4. A statement of the special education and related services and supplementary aids and services to be provided for the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to the child: (34 CFR 300.320(a)(4))

a. To advance appropriately toward attaining the annual goals;

b. To be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and

c. To be educated and participate with other children with disabilities and children without disabilities in the activities described in this section.

5. An explanation of the extent, if any, to which the child will not participate with children without disabilities in the regular class and in the activities described in this section. (34 CFR 300.320(a)(5))

6. The following information concerning state and divisionwide assessments shall be included: (34 CFR 300.320(a)(6))

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a. A statement of any individual accommodations or modifications that are necessary to measure the child's academic achievement and functional performance, in accordance with the guidelines approved by the Board of Education, in the administration of state assessments of student achievement that are needed in order for the child to participate in the assessment;

b. If the IEP team determines that the child will not participate in a particular state assessment of student achievement (or part of an assessment), a statement of:

(1) Why that assessment is not appropriate for the child;

(2) How the child will be assessed, including participation in the alternate assessment for those students who meet the criteria for the alternate assessment; and

(3) How the child's nonparticipation in the assessment will impact the child's promotion; graduation with a modified standard, standard, or advanced studies diploma; or other matters.

c. A statement that the child shall participate in either the state assessment for all children that is part of the state assessment program or the state's alternate assessment;

d. A statement of any individual accommodations or modifications approved for use in the administration of divisionwide assessments of student achievement that are needed in order for the child to participate in the assessment;

e. If the IEP team determines that the child will not participate in a particular divisionwide assessment of student achievement (or part of an assessment), a statement of:

(1) Why that assessment is not appropriate for the child;

(2) How the child will be assessed; and

(3) How the child's nonparticipation in the assessment will impact the child's courses; promotion; graduation with a modified standard, standard, or advanced studies diploma; or other matters.

7. The projected dates (month, day, and year) for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications. Location refers to the continuum of alternative placements in 8VAC20-81-130 B. (34 CFR 300.320(a)(7))

8. A statement of: (34 CFR 300.320(a)(3))

a. How the child's progress toward the annual goals will be measured; and

b. When periodic reports on the progress the child is making toward meeting the goals will be provided; for

example, through the use of quarterly or other periodic reports, concurrent with the issuance of report cards.

9. Initial transition services (34 CFR 300.101(b) and 34 CFR 300.323(b))

a. In the case of a preschool-aged child with a disability, age two (on or before September 30) through age five (on or before September 30), whose parent(s) elect to receive services under Part B of the Act, the local educational agency shall develop an IEP.

b. The IEP team shall consider an IFSP that contains the IFSP content described under Part C of the Act (§1431 et seq.) including:

(1) A statement regarding natural environments, and

(2) A component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills.

c. These components of the child's IFSP may be incorporated into the child's IEP.

10. Secondary transition services. (34 CFR 300.43 and 34 CFR 300.320(b))

a. Prior to the child entering secondary school but beginning not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP team, and updated annually, the IEP shall include:

(1) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills;

(2) The transition services, including courses of study (such as participation in advanced-placement course or career and technical education program), needed to assist the child in reaching those goals; and

(3) A statement, if appropriate, of interagency responsibilities or any needed linkages.)

b. For a child pursuing a modified standard diploma, the IEP team shall consider the child's need for occupational readiness upon school completion, including consideration of courses to prepare the child as a career and technical education program completer.

c. Transition services shall be based on the individual child's needs, taking into account the child's strengths, preferences, and interests.

11. Beginning at least one year before a student reaches the age of majority, the student's IEP shall include a statement that the student has been informed of the rights under this chapter, if any, that will transfer to the student on reaching the age of majority. (34 CFR 300.320(c))

H. Agency responsibilities for secondary transition services. (34 CFR 300.324(c))

1. If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP of a student with a disability, the local educational agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

2. Nothing in this part relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

I. Additional requirements for eligible students with disabilities in state, regional, or local adult or juvenile correctional facilities. (34 CFR 300.324(d) and 34 CFR 300.102(a)(2); Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131))

1. A representative of the state from a state, regional, or local adult or juvenile correctional facility may participate as a member of the IEP team.

2. All requirements regarding IEP development, review, and revision in this section apply to students with disabilities in state, regional, or local adult or juvenile correctional facilities, including assessment requirements to graduate with a modified standard, standard, or advanced studies diploma.

The requirements related to least restrictive environment in 8VAC20-81-130 do not apply.

3. The following additional exceptions to subdivision 2 of this subsection apply only to students with disabilities who are convicted as an adult under state law and incarcerated in adult prisons:

a. The IEP team may modify the student's IEP or placement if the state has demonstrated to the IEP team a bona fide security or compelling penological interest that cannot be otherwise accommodated.

b. IEP requirements regarding participation in state assessments, including alternate assessments, do not apply.

c. IEP requirements regarding transition planning and transition services do not apply to students whose eligibility for special education and related services will end because of their age before they will be eligible for release from the correctional facility based on consideration of their sentence and their eligibility for early release.

8VAC20-81-120. Children who transfer.

A. Children with disabilities who transfer between local educational agencies in Virginia or transfer from a local educational agency outside of Virginia to a local educational agency in Virginia within the same school year are subject to the following provisions. (34 CFR 300.323(e), (f), and (g))

1. The new local educational agency shall take reasonable steps to obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education and related services to the child, from the previous local educational agency in which the child was enrolled. The previous local educational agency shall take reasonable steps to promptly respond to the request from the new local educational agency.

a. If the previous local educational agency is not forthcoming in providing the records for the child, the new local educational agency should contact the Virginia Department of Education for assistance in resolving the matter.

b. If the new local educational agency is unable to obtain the IEP from the previous local educational agency or from the parent, the new local educational agency is not required to provide special education and related services to the child. The new local educational agency shall place the student in a general educational program and conduct an evaluation if the new local educational agency determines that an evaluation is necessary.

2. The new local educational agency shall provide a free appropriate public education to the child, in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency, until the new local educational agency either:

a. Adopts the child's IEP from the previous local educational agency; or

b. Conducts an evaluation, if determined necessary by the local educational agency, and develops and implements a new IEP that meets the requirements in this chapter.

3. The local educational agency may develop and implement an interim IEP while obtaining and reviewing whatever information is needed to develop a new IEP.

4. If the parent does not provide written consent to a new IEP or an interim IEP, the local educational agency shall provide FAPE, in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency.

The parent(s) or local educational agency may initiate the dispute resolution options of mediation or due process to resolve the dispute.

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B. The new local educational agency shall provide the parent(s) with proper notice regarding actions taken to provide the child with a free appropriate public education.

C. If the local educational agency determines it necessary to conduct an evaluation of the child, the local educational agency shall provide proper notice, initiate evaluation procedures, conduct the evaluation, determine eligibility, and develop an IEP in accordance with this chapter. During the evaluation period, the local educational agency shall provide FAPE in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency.

D. When a child with a disability who was placed in a private residential school under the Comprehensive Services Act transfers to a new local educational agency, the new local educational agency shall review the current placements and adopt or revise and implement the IEP within 30 calendar days of receipt of written notification of the child's transfer. The former Comprehensive Services Act team is responsible for paying for services until 30 calendar days after the new Comprehensive Services Act team receives written notification of the child's residence in the new local educational agency from the former Comprehensive Services Act team. (The CSA Implementation Manual)

8VAC20-81-130. Least restrictive environment and placements.

A. General least restrictive environment requirements.

1. Each local educational agency shall ensure: (34 CFR 300.114)

a. That to the maximum extent appropriate, children with disabilities, including those in public or private institutions or other care facilities, are educated with children without disabilities; and

b. That special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

2. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and other nonacademic and extracurricular services and activities provided for children without disabilities, each local educational agency shall ensure that each child with a disability participates with children without disabilities in those services and activities to the maximum extent appropriate to the needs of the child with a disability. The local educational agency shall ensure that each child with a disability has the supplementary aids and services determined by the child's

IEP team to be appropriate and necessary for the child to participate in nonacademic settings. (34 CFR 300.117)

3. For children placed by local school divisions in public or private institutions or other care facilities, the local educational agency shall, if necessary, make arrangements with public and private institutions to ensure that requirements for least restrictive environment are met. (See also 8VAC20-81-150.) (34 CFR 300.114 and 34 CFR 300.118)

B. Continuum of alternative placements. (§22.1-213 of the Code of Virginia; 34 CFR 300.115)

1. Each local educational agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

2. The continuum shall:

a. Include the alternative placements listed in the term "special education" at 8VAC20-81-10; and

b. Make provision for supplementary services (e.g., resource room or services or itinerant instruction) to be provided in conjunction with regular education class placement. The continuum includes integrated service delivery, which occurs when some or all goals, including benchmarks and objectives if required, of the student's IEP are met in the general education setting with age-appropriate peers.

3. No single model for the delivery of services to any specific population or category of children with disabilities is acceptable for meeting the requirement for a continuum of alternative placements. All placement decisions shall be based on the individual needs of each child.

4. Local educational agencies shall document all alternatives considered and the rationale for choosing the selected placement.

5. Children with disabilities shall be served in a program with age-appropriate peers unless it can be shown that for a particular child with a disability, the alternative placement is appropriate as documented by the IEP.

C. Placements. (Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131); 34 CFR 300.116)

1. In determining the educational placement of a child with a disability, including a preschool child with a disability, each local educational agency shall ensure that:

a. The placement decision is made by the IEP team in conformity with the least restrictive environment provisions of this chapter.

b. The child's placement is:

- (1) Determined at least annually;
- (2) Based on the child's IEP; and
- (3) As close as possible to the child's home.

c. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that the child would attend if a child without a disability.

d. In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which the child needs.

e. A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

2. Home-based instruction shall be made available to children whose IEPs require the delivery of services in the home or other agreed-upon setting.

3. Homebound instruction shall be made available to children who are confined for periods that would prevent normal school attendance based upon certification of need by a licensed physician or clinical psychologist. For students eligible for special education and related services, the IEP team shall revise the IEP, as appropriate, and determine the delivery of homebound services, including the number of hours of services.

8VAC20-81-140. Placement of children at the Virginia School for the Deaf and the Blind at Staunton or the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton.

A. Placements are made by the local school division, in accordance with the administrative policies and procedures of the Virginia School for the Deaf and the Blind at Staunton or the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton (Virginia schools). The Virginia schools shall determine if the student meets the admission criteria of the Virginia schools. (§22.1-348 of the Code of Virginia)

B. When an eligible child is placed in the Virginia schools, the local school division is responsible for ensuring compliance with the requirements of this chapter.

C. For students who are residential students, the respective Virginia school is responsible for transportation. For students who are day students, the placing local school division is responsible for transportation to and from the school. (§22.1-347 C of the Code of Virginia)

8VAC20-81-150. Private school placement.

A. Private school placement by a local school division or Comprehensive Services Act team.

1. When a child with a disability is placed by a local school division or is placed for noneducational reasons by a Comprehensive Services Act team that includes the school division in a private special education school or facility that is licensed or has a certificate to operate, the local school division is responsible for ensuring compliance with the requirements of this chapter, including participation in state and divisionwide assessments. The local school division shall ensure that the child's IEP team develops an IEP appropriate for the child's needs while the child is in a private school or facility. (34 CFR 300.325(c))

2. Before a local school division places a child with a disability in a private school or facility that is licensed or has a certificate to operate, the local school division shall initiate and conduct a meeting in accordance with 8VAC20-81-110 to develop an IEP for the child. The local school division shall ensure that a representative of a private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by a private school or facility, including individual or conference telephone calls. (34 CFR 300.325(a))

3. When a child is presently receiving the services of a private school or facility that is licensed or has a certificate to operate, the local school division shall ensure that a representative of the private school or facility attends the IEP meeting. If the representative cannot attend, the local school division shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls. (34 CFR 300.325(a)(2))

4. After a child with a disability enters a private school or facility that is licensed or has a certificate to operate, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the local school division. (34 CFR 300.325(b)(1))

5. If the private school or facility initiates and conducts these meetings, the local school division shall ensure that the parent(s) and a local school division representative: (34 CFR 300.325(b)(2))

- a. Are involved in any decision affecting the child's IEP;
- b. Agree to any proposed changes in the program before those changes are implemented; and
- c. Are involved in any meetings that are held regarding reevaluation.

6. If the private school or facility implements a child's IEP, responsibility for compliance with the requirements regarding procedural safeguards, IEPs, assessment, reevaluation, and termination of services remains with the local school division. (34 CFR 300.325(c))

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7. When a child with a disability is placed by a local school division or a Comprehensive Services Act team in a private school or facility that is licensed or has a certificate to operate, all rights and protections under this chapter are extended to the child. (34 CFR 300.101)

8. If the parent(s) requests a due process hearing to challenge the child's removal from a placement that was made for noneducational reasons by a Comprehensive Services Act team, the child shall remain in the previous IEP placement agreed upon by the parent(s) and the local educational agency prior to placement by the Comprehensive Services Act team. (34 CFR 300.2(c))

9. When a child with a disability is placed in a private school or facility that is out of state, the placement shall be processed through the Interstate Compact on the Placement of Children in accordance with the Code of Virginia. (§22.1-218.1 of the Code of Virginia)

B. Placement of children by parents if a free appropriate public education is at issue.

1. Local school divisions are not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the local school division made a free appropriate public education available to the child and the parent(s) elected to place the child in a private school or facility. (34 CFR 300.148(a))

2. Disagreements between a parent(s) and a local school division regarding the availability of an appropriate program for the child and the question of financial responsibility are subject to the due process procedures of 8VAC20-81-200. (34 CFR 300.148(b))

3. If the parent(s) of a child with a disability, who previously received special education and related services under the authority of a local school division, enrolls the child in a private preschool, elementary, middle, or secondary school without the consent of or referral by the local school division, a court or a special education hearing officer may require the local school division to reimburse the parent(s) for the cost of that enrollment if the court or the special education hearing officer finds that the local school division had not made a free appropriate public education available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a special education hearing officer or a court even if it does not meet the standards of the Virginia Department of Education that apply to education provided by the Virginia Department of Education and provided by the local school division. (34 CFR 300.148(c))

4. The cost of reimbursement described in this section may be reduced or denied: (34 CFR 300.148(d))

a. If:

(1) At the most recent IEP meeting that the parent(s) attended prior to removal of the child from the public school, the parent(s) did not inform the IEP team that they were rejecting the placement proposed by the local school division to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(2) At least 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parent(s) did not give written notice to the local school division of the information described above;

b. If, prior to the parent's(s) removal of the child from the public school, the local school division informed the parent(s), through proper notice of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent(s) did not make the child available for the evaluation; or

c. Upon a judicial finding of unreasonableness with respect to actions taken by the parent(s).

5. Notwithstanding the above notice requirement, the cost of reimbursement may not be reduced or denied for the parent's(s) failure to provide the notice to the local school division if: (34 CFR 300.148(e))

a. The parent is illiterate or cannot write in English;

b. Compliance with this section would likely result in physical or serious emotional harm to the child;

c. The school prevented the parent(s) from providing the notice; or

d. The parent(s) had not received notice of the notice requirement in this section.

C. Parentally placed private school children with disabilities. The provisions of this section apply to children with disabilities who are enrolled by their parent(s) in private schools.

1. Definitions applicable to this subsection. (34 CFR 300.36)

a. The term "private school" includes:

(1) Private, denominational, or parochial schools in accordance with §22.1-254 of the Code of Virginia that meet the definition of elementary school or secondary school in subdivision 1 of this subsection;

(2) Preschool facilities that meet the definition of elementary school or secondary school in subdivision 1 of this subsection;

(3) Students who are home-tutored in accordance with §22.1-254 of the Code of Virginia; or

(4) Students who receive home instruction in accordance with §22.1-254.1 of the Code of Virginia.

b. The term "elementary school" means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under state law. (34 CFR 300.13)

c. The term "secondary school" means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under state law, except that it does not include any education beyond grade 12.

2. Child find. (§22.1-254.1 of the Code of Virginia; 34 CFR 300.130, 34 CFR 300.131(a) and (b), 34 CFR 300.132(a) and 34 CFR 300.134(a))

a. Each school division shall locate, identify, and evaluate all children with disabilities who are parentally placed in private schools located in the school division. The activities undertaken to carry out this responsibility for these children shall be comparable to activities undertaken for children with disabilities in public schools.

b. Each local school division shall consult with appropriate representatives of the private schools on how to carry out the child find activities in order to conduct thorough and complete child find activities, including:

(1) How parentally placed private school children suspected of having a disability can participate equitably; and

(2) How parents, teachers, and private school officials will be informed of the process.

c. The child find process shall be designed to ensure:

(1) The equitable participation of parentally placed private school children; and

(2) An accurate count of these children.

3. Services plan. Each local school division shall ensure that a services plan is developed and implemented for each parentally placed private school child with a disability who has been designated to receive special education and related services under this part. (34 CFR 300.132(b))

4. Expenditures.

a. To meet the requirement of the Act, each local school division shall spend the following on providing special education and related services to private school children with disabilities:

(1) For children, aged three to 21, inclusive, an amount that is the same proportion of the local school division's total subgrant under §1411 of the Act as the number of private school children with disabilities, aged three to 21, who are enrolled by their parents in private schools located in the school division served by the school division, is to the total children with disabilities in its jurisdiction, aged three to 21; and

(2) For children, aged three to five, inclusive, an amount that is the same proportion of the local school division total subgrant under §1419 of the Act as the number of privately placed school children with disabilities, aged three to five, who are enrolled by their parents in a private school located in the school division served by the school division, is to the total number of children with disabilities in its jurisdiction, aged three to five.

(3) If a local school division has not expended for equitable services all of the funds by the end of the fiscal year for which Congress appropriated the funds, the local school division shall obligate the remaining funds for special education and related services, including direct services, to parentally placed private school children with disabilities during a carry-over period of one additional year. (34 CFR 300.133(a))

(4) Local educational agencies may supplement, but not supplant, the proportionate share amount of federal funds required to be expended in accordance with this subdivision. (34 CFR 300.133(d))

b. In calculating the proportionate amount of federal funds to be provided for parentally placed private school children with disabilities, the local school division, after timely and meaningful consultation with representatives of private schools under this section, shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the local school division. (34 CFR 300.133(b))

c. After timely and meaningful consultation with representatives of parentally placed private school children with disabilities, the local school division shall determine the number of parentally placed private school children with disabilities attending private schools located in the local school division, and ensure that the count is conducted by December 1 of each year. The child count shall be used to determine the amount that the local school division shall spend on providing special education and related services to parentally placed private school children with disabilities in the next subsequent fiscal year. (34 CFR 300.133(c))

d. Expenditures for child find activities, including evaluation and eligibility, described in 8VAC20-81-50 through 8VAC20-81-80, may not be considered in

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determining whether the local school division has met the expenditure requirements of the Act. (34 CFR 300.133(a))

e. Local school divisions are not prohibited from providing services to parentally placed private school children with disabilities in excess of those required by this section. (34 CFR 300.133(d))

5. Consultation.

a. The local school division shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children. This includes: (34 CFR 300.134(a), (c), and (d))

(1) How the process will operate throughout the school year to ensure that parentally placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;

(2) How, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities;

(3) The types of services, including direct services and alternate service delivery mechanisms;

(4) How special education and related services will be apportioned if funds are insufficient to serve all parentally placed private school children; and

(5) How and when those decisions will be made.

b. If the local school division disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the local school division shall provide to the private school officials a written explanation of the reasons why the local school division chose not to provide services directly or through a contract. (34 CFR 300.134(e))

c. Following consultation, the local school division shall obtain a written affirmation signed by the representatives of participating private schools. (34 CFR 300.135)

If the representatives do not provide the affirmation within a reasonable period of time, the local school division shall forward the documentation of the consultation process to the Virginia Department of Education.

d. A private school official has the right to submit a complaint to the Virginia Department of Education that the local school division: (34 CFR 300.136)

(1) Did not engage in consultation that was meaningful and timely; or

(2) Did not give due consideration to the views of the private school official.

e. The private school official shall provide to the Virginia Department of Education the basis of the noncompliance by the local school division and the appropriate documentation. (34 CFR 300.136)

(1) If the private school official is dissatisfied with the decision of the Virginia Department of Education, the official may submit a complaint to the Secretary of Education, United States Department of Education by providing the information related to the noncompliance.

(2) The Virginia Department of Education shall forward the appropriate documentation to the U.S. Secretary of Education.

6. Equitable services determined. (34 CFR 300.137)

a. No parentally placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

b. Decisions about the services that will be provided to the parentally placed private school children with disabilities are made in accordance with the consultation process under subdivision 4 of this subsection and a services plan.

c. The local school division shall make the final decisions with respect to the services to be provided to eligible parentally placed private school children with disabilities.

d. The local school division shall:

(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child; and

(2) Ensure that a representative of the private school attends each meeting. If the representative cannot attend, the local school division shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

7. Services provided. (34 CFR 300.138 and 34 CFR 300.132(b))

a. The services provided to parentally placed private school children with disabilities shall be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to these children do not have to meet the requirements for highly qualified special education teachers.

b. Parentally placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

c. No parentally placed private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school.

d. Services provided in accordance with a services plan.

(1) Each parentally placed private school child with a disability who has been designated to receive services under this subsection shall have a services plan that describes the specific special education and related services that the local school division will provide to the child in light of the services that the local school division has determined it will make available to private school children with disabilities.

(2) The services plan, to the extent appropriate, shall meet the requirements for the content of the IEP with respect to the services provided, and be developed, reviewed, and revised consistent with the requirements of this chapter for IEPs.

e. The services shall be provided:

(1) By employees of a local school division; or

(2) Through contract by the local school division with an individual, association, agency, organization, or other entity.

f. Special education and related services provided to parentally placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.

8. Location of services. Services provided to a private school child with a disability may be provided on-site at the child's private school, including a religious school, to the extent consistent with law. (34 CFR 300.139(a))

9. Transportation. (34 CFR 300.139(b))

a. If necessary for the child to benefit from or participate in the services provided under this part, a parentally placed private school child with a disability shall be provided transportation:

(1) From the child's school or the child's home to a site other than the private school; and

(2) From the service site to the private school or to the child's home depending on the timing of the services.

b. Local school divisions are not required to provide transportation from the child's home to the private school.

c. The cost of the transportation described in this subsection may be included in calculating whether the local school division has met the requirement of this section.

10. Procedural safeguards, due process, and complaints. (34 CFR 300.140)

a. Due process inapplicable. The procedures relative to procedural safeguards, consent, mediation, due process hearings, attorneys' fees, and surrogate parents do not apply to complaints that a local school division has failed to meet the requirements of this subsection, including the provision of services indicated on the child's services plan.

b. Due process applicable. The procedures relative to procedural safeguards, consent, mediation, due process hearings, attorneys' fees, and surrogate parents do apply to complaints that a local school division has failed to meet the requirements of child find (including the requirements of referral for evaluation, evaluation, and eligibility) for parentally placed private school children with disabilities.

c. State complaints. Complaints that the Virginia Department of Education or local school division has failed to meet the requirements of this section may be filed under the procedures in 8VAC20-81-200.

d. The dispute resolution options described in subdivisions 9 b and 9 c of this subsection apply to the local educational agency in which the private school is located. (34 CFR 300.140(b)(2))

11. Separate classes prohibited. A local school division may not use funds available under the Act for classes that are organized separately on the basis of school enrollment or religion of the students if (i) the classes are at the same site and (ii) the classes include students enrolled in public schools and students enrolled in private schools. (34 CFR 300.143)

12. Requirement that funds not benefit a private school. A local school division may not use funds provided under the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school. The local school division shall use funds provided under the Act to meet the special education and related services needs of parentally placed private school children with disabilities, but not for the needs of a private school or the general needs of the students enrolled in the private school. (34 CFR 300.141)

13. Use of public school personnel. A local school division may use funds available under the Act to make public school personnel available in nonpublic facilities to the extent necessary to provide services under this section for parentally placed private school children with disabilities and if those services are not normally provided by the private school. (34 CFR 300.142(a))

14. Use of private school personnel. A local school division may use funds available under the Act to pay for

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the services of an employee of a private school to provide services to a parentally placed private school child, if the employee performs the services outside of the employee's regular hours of duty and the employee performs the services under public supervision and control. (34 CFR 300.142(b))

15. Requirements concerning property, equipment, and supplies for the benefit of private school children with disabilities. (34 CFR 300.144)

a. A local school division shall keep title to and exercise continuing administrative control of all property, equipment, and supplies that the local school division acquires with funds under the Act for the benefit of parentally placed private school children with disabilities.

b. The local school division may place equipment and supplies in a private school for the period of time needed for the program.

c. The local school division shall ensure that the equipment and supplies placed in a private school are used only for purposes of special education and related services for children with disabilities and can be removed from the private school without remodeling the private school facility.

d. The local school division shall remove equipment and supplies from a private school if (i) the equipment and supplies are no longer needed for purposes of special education and related services for children with disabilities or (ii) removal is necessary to avoid unauthorized use of the equipment and supplies for purposes other than special education and related services for children with disabilities.

e. No funds under the Act may be used for repairs, minor remodeling, or construction of private school facilities.

16. Reporting requirements. Each local school division shall maintain in its records, and provide to the Virginia Department of Education, the following information related to parentally placed private school children: (34 CFR 300.132(c))

a. The number of children evaluated;

b. The number of children determined to be children with disabilities; and

c. The number of children served.

8VAC20-81-160. Discipline procedures.

A. General. A child with a disability shall be entitled to the same due process rights that all children are entitled to under the Code of Virginia and the local educational agency's disciplinary policies and procedures. School personnel may consider any unique circumstances on a case-by-case basis

when deciding whether or not to order a change in placement for a child with a disability that violates a code of student conduct. (§22.1-277 of the Code of Virginia; 34 CFR 300.530(a))

B. Short-term removals.

1. A short-term removal is for a period of time of up to 10 consecutive school days or 10 cumulative school days in a school year. (34 CFR 300.530(b))

a. School personnel may short-term remove a child with a disability from the child's current educational setting to an appropriate interim alternative educational setting, another setting, or suspension, to the extent those alternatives are applied to a child without disabilities.

b. Additional short-term removals may apply to a child with a disability in a school year for separate incidents of misconduct as long as the removals do not constitute a pattern. If the short-term removals constitute a pattern, the requirements of subsection C of this section apply.

(1) The local educational agency determines when isolated, short-term removals for unrelated instances of misconduct are considered a pattern.

(2) These removals only constitute a change in placement if the local educational agency determines there is a pattern.

2. Services during short-term removals.

a. The local educational agency is not required to provide services during the first 10 school days in a school year that a child with a disability is short-term removed if services are not provided to a child without a disability who has been similarly removed. (34 CFR 300.530(b)(2))

b. For additional short-term removals, which do not constitute a pattern, the local educational agency shall provide services to the extent determined necessary to enable the student to continue to participate in the general education curriculum and to progress toward meeting the goals of the student's IEP. School personnel, in consultation with the student's special education teacher, make the service determinations. (34 CFR 300.530(b)(2))

c. For additional short-term removals that do not constitute a pattern, the local educational agency shall ensure that children with disabilities are included in the Virginia Department of Education and divisionwide assessment programs in accordance with the provisions of subdivision 4 of 8VAC20-81-20. (20 USC §1412(a)(16)(A))

C. Long-term removals.

1. A long-term removal is for more than 10 consecutive school days; or

2. The child has received a series of short-term removals that constitutes a pattern:

a. Because the removals cumulate to more than 10 school days in a school year;

b. Because the child's behavior is substantially similar to the child's behavior in previous incidents that results in a series of removals; and

c. Because of such additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

3. The local educational agency determines on a case-by-case basis whether a pattern of removals constitutes a change in placement. This determination is subject to review through due process and judicial proceedings. (34 CFR 300.530(a) and (b) and 34 CFR 300.536)

4. On the date on which the decision is made to long-term remove the student because of a violation of a code of student conduct, the local educational agency shall notify the parent(s) of the decision and provide the parent(s) with the procedural safeguards. (34 CFR 300.530(h))

5. Special circumstances. (34 CFR 300.530(g))

a. School personnel may remove a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if:

(1) The child carries a weapon to or possesses a weapon at school or a school function under the jurisdiction of a local educational agency or the Virginia Department of Education; or

(2) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a local educational agency or the Virginia Department of Education; or

b. The child inflicts seriously bodily injury upon another person at school or a school function under the jurisdiction of a local educational agency or the Virginia Department of Education.

c. For purposes of this part, "weapon," "controlled substance," and "serious bodily injury" have the meaning given the terms under 8VAC20-81-10.

6. Services during long-term removals.

a. A child with a disability who is long-term removed receives services during the disciplinary removal so as to enable the student to: (34 CFR 300.530(d) and 34 CFR 300.531)

(1) Continue to receive educational services so as to enable the student to continue to participate in the general educational curriculum, although in another setting;

(2) Continue to receive those services and modifications including those described in the child's current IEP that will enable the child to progress toward meeting the IEP goals; and

(3) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

b. For long-term removals, the local educational agency shall ensure that children with disabilities are included in the Virginia Department of Education and divisionwide assessment programs in accordance with the provisions of subdivision 4 of 8VAC20-81-20. (20 USC §1412(a)(16)(A))

c. The IEP team determines the services needed for the child with a disability who has been long-term removed. (34 CFR 300.530(d)(5))

D. Manifestation determination. (34 CFR 300.530(c), (e), (f), and (g))

1. Manifestation determination is required if the local educational agency is contemplating a removal that constitutes a change in placement for a child with a disability who has violated a code of student conduct of the local educational agency that applies to all students.

2. The local educational agency, the parent(s), and relevant members of the child's IEP team, as determined by the parent and the local educational agency, constitute the IEP team that shall convene immediately, if possible, but not later than 10 school days after the date on which the decision to take the action is made.

3. The IEP team shall review all relevant information in the child's file, including the child's IEP, any teacher observations, and any relevant information provided by the parent(s).

4. The IEP team then shall determine the conduct to be a manifestation of the child's disability:

(1) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

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(2) If the conduct in question was the direct result of the local educational agency's failure to implement the child's IEP.

5. If the IEP team determines that the local educational agency failed to implement the child's IEP, the local educational agency shall take immediate steps to remedy those deficiencies.

6. If the IEP team determines that the child's behavior was a manifestation of the child's disability, the IEP team shall:

a. Conduct a functional behavioral assessment, unless the local educational agency had conducted this assessment before the behavior that resulted in the change in placement occurred, and implement a behavioral intervention plan for the child; or

b. If a behavioral intervention plan already has been developed, review this plan, and modify it, as necessary, to address the behavior; and

c. Return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change in placement as part of the modification of the behavioral intervention plan. The exception to this provision is when the child has been removed for not more than 45 school days to an interim alternative educational setting for matters described in subdivision C 5 a of this section. In that case, school personnel may keep the student in the interim alternative educational setting until the expiration of the 45-day period.

7. If the IEP team determines that the child's behavior was not a manifestation of the child's disability, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except that services shall be provided in accordance with subdivision C 6 a of this section.

E. Appeal. (34 CFR 300.532(a) and (c))

1. If the child's parent(s) disagrees with the determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement under these disciplinary procedures, the parent(s) may request an expedited due process hearing.

2. A local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may request an expedited due process hearing.

3. The local educational agency is responsible for arranging the expedited due process in accordance with the Virginia Department of Education's hearing procedures at 8VAC20-81-210.

a. The hearing shall occur within 20 school days of the date the request for the hearing is filed.

b. The special education hearing officer shall make a determination within 10 school days after the hearing.

c. Unless the parent(s) and the local educational agency agree in writing to waive the resolution meeting, or agree to use the mediation process,

(1) A resolution meeting shall occur within 7 calendar days of receiving the request for a hearing.

(2) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the request for a hearing.

d. The decisions on expedited due process hearings are appealable consistent with 8VAC20-81-210.

F. Authority of the special education hearing officer.

1. A local educational agency may request an expedited due process hearing under the Virginia Department of Education's due process hearing procedures to effect a change in placement of a child with a disability for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the local educational agency believes that the child's behavior is likely to result in injury to self or others.

2. The special education hearing officer under 8VAC20-81-210 may: (34 CFR 300.532(a) and (b))

a. Return the child with a disability to the placement from which the child was removed if the special education hearing officer determines that the removal was a violation of subsections C and D of this section, or that the child's behavior was a manifestation of the child's disability; or

b. Order a change in the placement to an appropriate interim alternative educational setting for not more than 45 school days if the special education hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the student or others.

3. A local educational agency may ask the special education hearing officer for an extension of 45 school days for the interim alternative educational setting of a child with a disability when school personnel believe that the child's return to the regular placement would result in injury to the student or others. (34 CFR 300.532(b)(3))

G. Placement during appeals. (34 CFR 300.533)

1. The child shall remain in the interim alternative educational setting pending the decision of the special education hearing officer, or

2. Until the expiration of the time for the disciplinary period set forth in this section, whichever comes first, unless the parent and the local educational agency agree otherwise.

H. Protection for children not yet eligible for special education and related services. (34 CFR 300.534)

1. A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violates a code of student conduct of the local educational agency may assert any of the protections provided in this chapter if the local educational agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

2. A local educational agency shall be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred:

(a) The parent(s) of the child expressed concern in writing (or orally if the parent(s) does not know how to write or has a disability that prevents a written statement) to school personnel that the child is in need of special education and related services;

(b) The parent(s) of the child requested an evaluation of the child to be determined eligible for special education and related services; or

(c) A teacher of the child or school personnel expressed concern about a pattern of behavior demonstrated by the child directly to the director of special education of the local educational agency or to other supervisory personnel of the local educational agency.

3. A local educational agency would not be deemed to have knowledge that a child is a child with a disability if:

(a) The parent of the child has not allowed a previous evaluation of the child or has refused services; or

(b) The child has been evaluated in accordance with 8VAC20-81-70 and 8VAC20-81-80 and determined ineligible for special education and related services.

4. If the local educational agency does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures applied to a child without a disability who engages in comparable behaviors.

5. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this section, the evaluation shall be conducted in an expedited manner.

a. Until the evaluation is completed, the child remains in the educational placement determined by the school personnel, which can include suspension or expulsion without educational services.

b. If the child is determined to be a child with a disability, taking into consideration information from the evaluations conducted by the local educational agency and information provided by the parent(s), the local educational agency shall provide special education and related services as required for a child with a disability who is disciplined.

I. Referral to and action by law enforcement and judicial authorities. (34 CFR 300.535)

1. Nothing in this chapter prohibits a local educational agency from reporting a crime by a child with a disability to appropriate authorities, or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a child with a disability to the extent such action applies to a student without a disability.

2. In reporting the crime, the local educational agency shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom school personnel report the crime. Transmission of such records shall be in accordance with requirements under the Management of the Student's Scholastic Record in the Public Schools of Virginia (8VAC20-150).

J. Information on disciplinary actions. (34 CFR 300.229)

1. The Virginia Department of Education requires that local educational agencies include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child.

2. Local educational agencies are responsible for transmitting the statement to the Virginia Department of Education upon request to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled students.

3. The statement may include:

a. A description of any behavior engaged in by the child who required disciplinary action;

b. A description of the disciplinary action; and

c. Any other information that is relevant to the safety of the child and other individuals involved with the child.

4. If the child transfers from one school to another, the transmission of any of the child's records shall include the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.

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8VAC20-81-170. Procedural safeguards.

A. Opportunity to examine records; parent participation. (34 CFR 300.322(e), 34 CFR 300.500 and 34 CFR 300.501; 8VAC20-150)

1. Procedural safeguards. Each local educational agency shall establish, maintain, and implement procedural safeguards as follows:

a. The parent(s) of a child with a disability shall be afforded an opportunity to:

(1) Inspect and review all education records with respect to (i) the identification, evaluation, and educational placement of the child; and (ii) the provision of a free appropriate public education to the child.

(2) Participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child.

b. Parent participation in meetings.

(1) Each local educational agency shall provide notice to ensure that the parent(s) of a child with a disability has the opportunity to participate in meetings described in subdivision 1 a (2) of this subsection, including notifying the parent(s) of the meeting early enough to ensure that the parent has an opportunity to participate. The notice shall:

(a) Indicate the purpose, date, time, and location of the meeting and who will be in attendance;

(b) Inform the parent(s) that at their discretion or at the discretion of the local educational agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate, may participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child;

(c) Inform the parent that the determination of the knowledge or special expertise shall be made by the party who invited the individual; and

(d) Inform the parent(s), in the case of a child who was previously served under Part C that an invitation to the initial IEP team meeting shall, at the request of the parent, be sent to the Part C service coordinator or other representatives of Part C to assist with the smooth transition of services.

(2) A meeting does not include informal or unscheduled conversations involving local educational agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's

IEP. A meeting also does not include preparatory activities that local educational agency personnel engage in to develop a proposal or a response to a parent proposal that will be discussed at a later meeting.

c. Parent involvement in placement decisions.

(1) Each local educational agency shall ensure that a parent(s) of each child with a disability is a member of the IEP team that makes decisions on the educational placement of their child or any Comprehensive Services Act team that makes decisions on the educational placement of their child.

(2) In implementing the requirements of subdivision 1 c (1) of this subsection, the local educational agency shall provide notice in accordance with the requirements of 8VAC20-81-110 E.

(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the local educational agency shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(4) A placement decision may be made by the IEP or Comprehensive Services Act team without the involvement of the parent(s) if the local educational agency is unable to obtain the parents' participation in the decision. In this case, the local educational agency shall have a record of its attempt to ensure the parents' involvement.

(5) The local educational agency shall take whatever action is necessary to ensure that the parent(s) understand and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for a parent(s) with deafness, or whose native language is other than English.

(6) The exception to the IEP team determination regarding placement is with disciplinary actions involving interim alternative education settings for 45-day removals under 8VAC20-81-160 D 6 c. (34 CFR 300.530(f)(2) and (g))

B. Independent educational evaluation.

1. General. (34 CFR 300.502(a))

a. The parent(s) of a child with a disability shall have the right to obtain an independent educational evaluation of the child.

b. The local educational agency shall provide to the parent(s) of a child with a disability, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained and the applicable criteria for independent educational evaluations.

2. Parental right to evaluation at public expense. (34 CFR 300.502(a), (b), and (e))

a. The parent(s) has the right to an independent educational evaluation at public expense if the parent(s) disagrees with an evaluation component obtained by the local educational agency.

b. If the parent(s) requests an independent educational evaluation at public expense, the local educational agency shall, without unnecessary delay, either:

(1) Initiate a due process hearing to show that its evaluation is appropriate; or

(2) Ensure that an independent educational evaluation is provided at public expense, unless the local educational agency demonstrates in a due process hearing that the evaluation obtained by the parent(s) does not meet the local educational agency's criteria.

c. If the local educational agency initiates a due process hearing and the final decision is that the local educational agency's evaluation is appropriate, the parent(s) still has the right to an independent educational evaluation, but not at public expense.

d. If the parent(s) requests an independent educational evaluation, the local educational agency may ask the reasons for the parent's objection to the public evaluation. However, the explanation by the parent(s) may not be required and the local educational agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

e. A parent is entitled to only one independent educational evaluation at public expense each time the public educational agency conducts an evaluation component with which the parent disagrees.

f. If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria that the local educational agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. Except for the criteria, a local educational agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

3. Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with the local educational agency an evaluation obtained at private expense, the results of the evaluation: (34 CFR 300.502(c))

a. Shall be considered by the local educational agency, if it meets local educational agency criteria, in any decision regarding a free appropriate public education for the child; and

b. May be presented by any party as evidence at a hearing under 8VAC20-81-210.

4. Requests for evaluations by special education hearing officers. If a special education hearing officer requests an independent educational evaluation for an evaluation component, as part of a hearing on a due process complaint, the cost of the evaluation shall be a public expense. (34 CFR 300.502(d))

C. Prior written notice by the local educational agency; content of notice.

1. Prior written notice shall be given to the parent(s) of a child with a disability within a reasonable time before the local educational agency: (34 CFR 300.503(a))

a. Proposes to initiate or change the identification, evaluation, or educational placement (including graduation with a standard or advanced studies diploma) of the child, or the provision of a free appropriate public education for the child; or

b. Refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education for the child.

2. The notice shall include: (34 CFR 300.503(b))

a. A description of the action proposed or refused by the local educational agency;

b. An explanation of why the local educational agency proposes or refuses to take the action;

c. A description of any other options the IEP team considered and the reasons for the rejection of those options;

d. A description of each evaluation procedure, assessment, record, or report the local educational agency used as a basis for the proposed or refused action;

e. A description of any other factors that are relevant to the local educational agency's proposal or refusal;

f. A statement that the parent(s) of a child with a disability have protection under the procedural safeguards of this chapter and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

g. Sources for the parent(s) to contact in order to obtain assistance in understanding the provisions of this section.

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3. a. The notice shall be: (i) written in language understandable to the general public; and (ii) provided in the native language of the parent(s) or other mode of communication used by the parent(s), unless it is clearly not feasible to do so. (34 CFR 300.503(c))

b. If the native language or other mode of communication of the parent(s) is not a written language, the local educational agency shall take steps to ensure that:

(1) The notice is translated orally or by other means to the parent(s) in their native language or other mode of communication;

(2) The parent(s) understand the content of the notice; and

(3) There is written evidence that the requirements of subdivisions (1) and (2) of this subdivision have been met.

D. Procedural safeguards notice. (34 CFR 300.504 and 34 CFR 300.508(e)(1))

1. A copy of the procedural safeguards available to the parent(s) of a child with a disability shall be given to the parent(s) by the local educational agency only one time a school year, except that a copy shall be given to the parent(s) upon:

a. Initial referral for or parent request for evaluation;

b. If the parent requests an additional copy;

c. Receipt of the first state complaint during a school year;

d. Receipt of the first request for a due process hearing during a school year; and

e. On the date on which the decision is made to make a disciplinary removal that constitutes a change in placement.

2. The local educational agency may place a current copy of the procedural safeguards notice on its Internet website if a website exists, but the local educational agency does not meet its obligation under subdivision 1 of this subsection by directing the parent to the website. The local educational agency shall offer the parent(s) a printed copy of the procedural safeguards notice in accordance with subdivision 1.

3. The procedural safeguards notice shall include a full explanation of all of the procedural safeguards available relating to:

a. Independent educational evaluation;

b. Prior written notice;

c. Parental consent;

d. Access to educational records;

e. Opportunity to present and resolve complaints through the due process procedures;

f. The availability of mediation;

g. The child's placement during pendency of due process proceedings;

h. Procedures for students who are subject to placement in an interim alternative educational setting;

i. Requirements for unilateral placement by parents of children in private schools at public expense;

j. Due process hearings, including requirements for disclosure of evaluation results and recommendations;

k. Civil actions, including the time period in which to file those actions;

l. Attorneys' fees; and

m. The opportunity to present and resolve complaints through the state complaint procedures, including:

(1) The time period in which to file a complaint;

(2) The opportunity for the local educational agency to resolve the complaint; and

(3) The difference between the due process and the state complaint procedures, including the applicable jurisdiction, potential issues, and timelines for each process.

4. The notice required under this subsection shall meet the prior notice requirements regarding understandable language in subdivision C 3 of this section.

E. Parental consent.

1. Required parental consent. Informed parental consent is required before:

a. Conducting an initial evaluation or reevaluation, including a functional behavioral assessment if such assessment is not a review of existing data conducted at an IEP meeting; (34 CFR 300.300(a)(1)(i))

b. An initial eligibility determination or any change in categorical identification;

c. Initial provision of special education and related services to a child with a disability; (34 CFR 300.300(b)(1))

d. Any revision to the child's IEP services, except as outlined in subdivision 2 f of this subsection;

e. Accessing a child's public benefits or insurance or private insurance proceeds in accordance with subsection F of this section; and (34 CFR 300.154)

f. Inviting to an IEP meeting a representative of any participating agency that is likely to be responsible for

providing or paying for secondary transition services. (34 CFR 300.321(b)(3))

2. Parental consent not required. Parental consent is not required before:

a. Review of existing data as part of an evaluation or a reevaluation, including a functional behavioral assessment; (34 CFR 300.300(d)(1))

b. Administration of a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of the parent(s) of all children; (34 CFR 300.300(d)(1))

c. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation; (34 CFR 300.302)

d. Administration of a test or other evaluation that is used to measure progress on the child's IEP goals;

e. A teacher's or related service provider's observations or ongoing classroom evaluations;

f. Any partial or complete termination of special education and related services;

g. Conducting an initial evaluation of a child who is a ward of the state and who is not residing with his parent(s) if: (34 CFR 300.300(a)(2))

(1) Despite reasonable efforts, the local educational agency cannot discover the whereabouts of the parent(s);

(2) The parent's rights have been terminated; or

(3) The rights of the parent(s) to make educational decisions have been subrogated by a judge and an individual appointed by the judge to represent the child has consent to the initial evaluation.

h. The local educational agency provides a free appropriate public education to children with disabilities who transfer public agencies in Virginia or transfer to Virginia from another state in accordance with 8VAC20-81-120. (34 CFR 300.323(e) and (f))

3. Revoking consent. If a parent revokes consent, that revocation is not retroactive in accordance with the definition of "consent" at 8VAC20-81-10.

4. Refusing consent.

a. If the parent(s) refuses consent for initial evaluation or a reevaluation, the local educational agency may, but is not required to, use mediation or due process hearing procedures to pursue the evaluation. The local educational agency does not violate its obligations under this chapter if it declines to pursue the evaluation. (34 CFR 300.300(a)(3) and (c)(1))

b. If the parent(s) refuses to consent to the initial provision of special education and related services: (34 CFR 300.300(b)(3) and (4))

(1) The local educational agency may not use mediation or due process hearing procedures to obtain parental consent, or a ruling that the services may be provided to the child;

(2) The local educational agency's failure to provide the special education and related services to the child for which consent is requested is not considered a violation of the requirement to provide FAPE; and

(3) The local educational agency is not required to convene an IEP meeting or to develop an IEP for the child for the special education and related services for which the local educational agency requests consent. However, the local educational agency may convene an IEP meeting and develop an IEP to inform the parent about the services that may be provided with parental consent.

c. If the parent(s) of a parentally-placed private school child refuses consent for an initial evaluation or a reevaluation, the local educational agency: (34 CFR 300.300(d)(4))

(1) May not use mediation or due process hearing procedures to obtain parental consent, or a ruling that the evaluation of the child may be completed; and

(2) Is not required to consider the child as eligible for equitable provision of services in accordance with 8VAC20-81-150.

d. A local educational agency may not use a parent's refusal to consent to one service or activity to deny the parent(s) or child any other service, benefit, or activity of the local educational agency, except as provided by this chapter. (34 CFR 300.300(d)(3))

5. Withholding consent.

a. If the parent(s) fails to respond to a request to consent for an initial evaluation, the local educational agency may, but is not required to, use mediation or due process hearing procedures to pursue the evaluation. The local educational agency does not violate its obligations under this chapter if it declines to pursue the evaluation. (34 CFR 300.300(a)(3) and (c)(1))

b. Informed parental consent need not be obtained for reevaluation if the local educational agency can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent(s) has failed to respond. (34 CFR 300.300(c)(2))

c. If the parent(s) fails to respond to a request to provide consent for the initial provision of special education and

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related services, the local educational agency follows the provisions of subdivision 4 b of this subsection. (34 CFR 300.300(b)(3) and (4))

6. Consent for initial evaluation may not be construed as consent for initial provision of special education and related services. (34 CFR 300.300(a)(1)(ii))

7. The local educational agency shall make reasonable efforts to obtain informed parental consent for an initial evaluation and the initial provision of special education and related services. (34 CFR 300.300(a)(1)(iii) and (b)(2))

8. To meet the reasonable measures requirement of this section, the local educational agency shall have a record of its attempts to secure the consent, such as: (34 CFR 300.322(d) and 34 CFR 300.300(a), (b), (c) and (d)(5))

a. Detailed records of telephone calls made or attempted and the results of those calls;

b. Copies of correspondence sent to the parent(s) and any responses received; and

c. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

F. Parental rights regarding use of public or private insurance. Each local educational agency using Medicaid or other public benefits or insurance programs to pay for services required under this chapter, as permitted under the public insurance program, and each local educational agency using private insurance to pay for services required under this chapter, shall provide notice to the parent(s) and obtain informed parental consent in accordance with 8VAC20-81-300. (34 CFR 300.154)

G. Confidentiality of information.

1. Access rights. (34 CFR 300.613)

a. The local educational agency shall permit the parent(s) to inspect and review any education records relating to their children that are collected, maintained, or used by the local educational agency under this chapter. The local educational agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing in accordance with 8VAC20-81-160 and 8VAC20-81-210, or resolution session in accordance with 8VAC20-81-210, and in no case more than 45 calendar days after the request has been made.

b. The right to inspect and review education records under this section includes:

(1) The right to a response from the local educational agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the local educational agency provide copies of the records containing the information if failure to provide those copies would effectively

prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

c. A local educational agency may presume that a parent has authority to inspect and review records relating to the parent's children unless the local educational agency has been advised that the parent does not have the authority under applicable Virginia law governing such matters as guardianship, separation, and divorce.

2. Record of access. Each local educational agency shall keep a record of parties, except parents and authorized employees of the local educational agency, obtaining access to education records collected, maintained, or used under Part B of the Act, including the name of the party, the date of access, and the purpose for which the party is authorized to use the records. (34 CFR 300.614)

3. Record on more than one child. If any education record includes information on more than one child, the parent(s) of those children have the right to inspect and review only the information relating to their child or to be informed of the specific information requested. (34 CFR 300.615)

4. List of types and locations of information. Each local educational agency shall provide a parent(s) on request a list of the types and locations of education records collected, maintained, or used by the local educational agency. (34 CFR 300.616)

5. Fees. (34 CFR 300.617)

a. Each local educational agency may charge a fee for copies of records that are made for a parent(s) under this chapter if the fee does not effectively prevent the parent(s) from exercising their right to inspect and review those records.

b. A local educational agency may not charge a fee to search for or to retrieve information under this section.

6. Amendment of records at parent's request. (34 CFR 300.618)

a. A parent(s) who believes that information in the education records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the child may request the local educational agency that maintains the information to amend the information.

b. The local educational agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

c. If the local educational agency decides to refuse to amend the information in accordance with the request, it

shall inform the parent(s) of the refusal and advise the parent(s) of the right to a hearing under subdivision 7 of this subsection.

7. Opportunity for a hearing. The local educational agency shall provide on request an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. (34 CFR 300.619)

8. Results of hearing. (34 CFR 300.620)

a. If, as a result of the hearing, the local educational agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

b. If, as a result of the hearing, the local educational agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the child's education records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

c. Any explanation placed in the records of the child under this section shall:

(1) Be maintained by the local educational agency as part of the records of the child as long as the record or contested portion is maintained by the local educational agency; and

(2) If the records of the child or the contested portion is disclosed by the local educational agency to any party, the explanation shall also be disclosed to the party.

9. Hearing procedures. A hearing held under subdivision 7 of this subsection shall be conducted in accordance with the procedures under 34 CFR 99.22 of the Family Educational Rights and Privacy Act. (20 USC §1232g; 34 CFR 300.621)

10. Consent. (34 CFR 300.32; 34 CFR 300.62)

a. Parental consent shall be obtained before personally identifiable information is disclosed to anyone other than officials of the local educational agency unless the information is contained in the education records, and the disclosure is authorized under the Family Education Rights and Privacy Act. (20 USC §1232g).

b. Parental consent is not required before personally identifiable information is disclosed to officials of the local educational agencies collecting, maintaining, or using personally identifiable information under this chapter, except:

(1) Parental consent, or the consent of a child who has reached the age of majority, shall be obtained before

personally identifiable information is released to officials of any agency or institution providing or paying for transition services.

(2) If a child is enrolled, or is going to enroll in a private school that is not located in the local educational agency where the parent(s) resides, parental consent shall be obtained before any personally identifiable information about the child is released between officials in the local educational agency where the private school is located, and officials in the local educational agency where the parent(s) resides.

11. Safeguards. (34 CFR 300.623)

a. Each local educational agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

b. One official at each local educational agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

c. All persons collecting, maintaining, or using personally identifiable information shall receive training or instruction on Virginia's policies and procedures for ensuring confidentiality of the information.

d. Each local educational agency shall maintain for public inspection a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

12. Destruction of information. (34 CFR 300.624)

a. The local educational agency shall inform parents when personally identifiable information collected, maintained, or used under this chapter is no longer needed to provide educational services to the child.

b. This information shall be destroyed at the request of the parents. However, a permanent record of a student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed shall be maintained without time limitation.

c. The local educational agency shall comply with the Records Retention and Disposition Schedule of the Library of Virginia.

H. Electronic mail. If the local educational agency makes the option available, parent(s) of a child with a disability may elect to receive prior written notice, the procedural safeguards notice, and the notice of a request for due process, by electronic mail. (34 CFR 300.505)

I. Electronic signature. If an electronically filed document contains an electronic signature, the electronic signature has the legal effect and enforceability of an original signature. An electronic signature is an electronic sound, symbol, or process attached to or logically associated with a record and executed

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or adopted by a person with the intent to sign the record. (Chapter 42.1 (§59.1-479 et seq.) of Title 59.1 of the Code of Virginia; 34 CFR 300.9)

8VAC20-81-180. Transfer of rights to students who reach the age of majority.

A. All rights accorded to the parent(s) under the Act transfer to the student upon the age of majority (age 18), including those students who are incarcerated in an adult or juvenile federal, state, regional, or local correctional institution. (34 CFR 300.520)

B. Notification.

1. The local educational agency shall notify the parent(s) and the student of the following: (34 CFR 300.520)

a. That educational rights under the Act will transfer from the parent(s) to the student upon the student reaching the age of majority; and

b. That procedures exist for appointing the parent(s) or, if the parent(s) are not available, another appropriate individual to represent the educational interests of the student throughout the student's eligibility for special education and related services if the student is determined not to have the ability to provide informed consent with respect to the educational program as specified in subsection C of this section.

2. The local educational agency shall include a statement on the IEP (beginning at least one year before the student reaches the age of majority) that the student has been informed of the rights that will transfer to the student on reaching the age of 18. (34 CFR 300.320(c))

3. The local educational agency shall provide any further notices required under the Act to both the student and the parent(s).

4. The local educational agency may continue to invite the parent(s), as appropriate, as bona fide interested parties knowledgeable of the student's abilities, to participate in meetings where decisions are being made regarding their adult student's educational program.

5. The adult student may invite the student's parent(s) to participate in meetings where decisions are being made regarding the student's educational program.

C. A student who has reached the age of 18 years shall be presumed to be a competent adult, and thus all rights under the Act shall transfer to the adult student, unless one of the following actions has been taken:

1. The adult student is declared legally incompetent or legally incapacitated by a court of competent jurisdiction and a representative has been appointed by the court to make decisions for the student;

2. The adult student designates, in writing, by power of attorney or similar legal document, another competent adult to be the student's agent to receive notices and to participate in meetings and all other procedures related to the student's educational program. A local educational agency shall rely on such designation until notified that the authority to act under the designation is revoked, terminated, or superseded by court order or by the adult student;

3. The adult student is certified, according to the following procedures, as unable to provide informed consent. Any adult student who is found eligible for special education pursuant to this chapter and does not have a representative appointed to make decisions on the adult student's behalf by a court of competent jurisdiction may have an educational representative appointed based on the following certification procedure to act on the student's behalf for all matters described in this chapter and to exercise rights related to the student's scholastic record. An educational representative may be appointed based on the following conditions and procedures: (34 CFR 300.520(b))

a. Two professionals (one from list one and one from list two, as set out in the following subdivisions,) shall, based on a personal examination or interview, certify in writing that the adult student is incapable of providing informed consent and that the student has been informed of this decision:

(1) List one includes (i) a medical doctor licensed in the state where the doctor practices medicine; (ii) a physician's assistant whose certification is countersigned by a supervising physician; or (iii) a certified nurse practitioner.

(2) List two includes (i) a medical doctor licensed in the state where the doctor practices medicine; (ii) a licensed clinical psychologist; (iii) a licensed clinical social worker; (iv) an attorney who is qualified to serve as a guardian ad litem for adults under the rules of the Virginia Supreme Court; or (v) a court-appointed special advocate for the adult student.

b. The individuals who provide the certification in subdivision 3 a of this subsection may not be employees of the local educational agency currently serving the adult student or be related by blood or marriage to the adult student.

c. Incapable of providing informed consent, as used in this section, means that the individual is unable to:

(1) Understand the nature, extent and probable consequences of a proposed educational program or option on a continuing or consistent basis;

(2) Make a rational evaluation of the benefits or disadvantages of a proposed educational decision or

program as compared with the benefits or disadvantages of another proposed educational decision or program on a continuing or consistent basis; or

(3) Communicate such understanding in any meaningful way.

d. The certification that the adult student is incapable of providing informed consent may be made as early as 60 calendar days prior to the adult student's eighteenth birthday or 65 business days prior to an eligibility meeting if the adult student is undergoing initial eligibility for special education services.

e. The certification shall state when and how often a review of the adult student's ability to provide informed consent shall be made and why that time period was chosen.

f. The adult student's ability to provide informed consent shall be recertified at any time that the previous certifications are challenged. Challenges can be made by the student or by anyone with a bona fide interest and knowledge of the adult student, except that challenges cannot be made by employees of local educational agencies. Challenges shall be provided in writing to the local educational agency's administrator of special education who then shall notify the adult student and current appointed representative.

(1) Upon receipt of a written challenge to the certification by the adult student, the local educational agency may not rely on an educational representative, appointed pursuant to subsection D of this section, for any purpose until a designated educational representative is affirmed by a court of competent jurisdiction;

(2) Upon receipt of a written challenge to the certification by anyone with a bona fide interest and knowledge of the adult student, the local educational agency may not rely on an educational representative, appointed pursuant to subsection D of this section for any purpose until a more current written certification is provided by the appointed educational representative. Certifications provided after a challenge are effective for 60 calendar days, unless a proceeding in a court of competent jurisdiction is filed challenging and requesting review of the certifications. The local educational agency shall not rely upon the designated educational representative until the representative is affirmed by the court; or

4. The adult student, based on certification by written order from a judge of competent jurisdiction, is admitted to a facility for the training, treatment and habilitation of persons with mental retardation in accordance with §37.2-806 of the Code of Virginia. The state-operated program serving the adult student may rely on the judicial

certification and appoint an educational representative to act on the student's behalf during the student's stay at the state-operated program.

D. If the local educational agency receives written notification of the action in subdivision C 3 of this section or if the state-operated program receives the judicial certification in subdivision C 4 of this section, the local educational agency shall designate the parent(s) of the adult student to act as an educational representative of the adult student (unless the student is married, in which event the student's adult spouse shall be designated as educational representative).

1. If the parent(s) or adult spouse is not available and competent to give informed consent, the administrator of special education or designee shall designate a competent individual from among the following:

- a. An adult brother or sister;
- b. An adult aunt or uncle; or
- c. A grandparent.

2. If no family member from the previous categories is available and competent to serve as the adult student's educational representative, then a person trained as a surrogate parent shall be appointed to serve as the educational representative by the local educational agency.

8VAC20-81-190. Mediation.

A. Each local educational agency shall ensure that the parent(s) of a child with a disability are informed of the option of mediation to resolve disputes involving the identification, evaluation of the child, or educational placement and services of the child or the provision of a free appropriate public education to the child, including matters arising prior to the filing of a state complaint or request for a due process hearing. Mediation is available to resolve these issues at any time a joint request is made to the Virginia Department of Education from a school representative and a parent. (§22.1-214 B of the Code of Virginia; 34 CFR 300.506(a))

B. The local educational agency shall use the Virginia Department of Education's mediation process to resolve such disputes. The procedures shall ensure that the process is: (§22.1-214 B of the Code of Virginia; 34 CFR 300.506(b)(1))

- 1. Voluntary on the part of both the local educational agency and parent;
- 2. Not used to deny or delay a parent's(s') right to a due process hearing or to deny any other rights afforded under the Act; and
- 3. Conducted by a qualified and impartial mediator who is trained in effective mediation techniques and who is knowledgeable in laws and regulations relating to the provision of special education and related services.

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C. The local educational agency or the Virginia Department of Education may establish procedures to offer parents and schools who choose not to use the mediation process an opportunity to meet, at a time and location convenient to them, with a disinterested party who is under contract with a parent training and information center or community parent resource center in Virginia established under §1472 or 1473 of the Act; or an appropriate alternative dispute resolution entity. The purpose of the meeting would be to explain the benefits of and encourage the parent(s) to use the mediation process. (34 CFR 300.506(b)(2))

D. In accordance with the Virginia Department of Education's procedures: (34 CFR 300.506(b)(3) and (4))

1. The Virginia Department of Education maintains a list of individuals who are qualified mediators, knowledgeable in laws and regulations relating to the provision of special education and related services, and trained in effective mediation techniques;

2. The mediator is chosen on a rotation basis; and

3. The Virginia Department of Education bears the cost of the mediation process, including costs in subsection C of this section.

E. The mediation process shall: (34 CFR 300.506(b)(5), (b)(6), and (b)(7))

1. Be scheduled in a timely manner and held in a location that is convenient to the parties to the dispute;

2. Conclude with a written legally binding agreement, if an agreement is reached by the parties to the dispute, that:

a. States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;

b. Is signed by both the parent and a representative of the local educational agency who has the authority to bind the local educational agency; and

c. Is enforceable in any state or federal court of competent jurisdiction.

3. Guarantee that discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings of any state or federal court. Parties to the mediation process may be required to sign a consent form to mediate containing a confidentiality pledge prior to the commencement of the mediation process.

F. An individual who serves as a mediator: (34 CFR 300.506)

1. May not be an employee of any local educational agency or the Virginia Department of Education if the Virginia

Department of Education is providing direct services to a child who is the subject of the mediation process;

2. Shall not have a personal or professional conflict of interest, including relationships or contracts with schools or parents outside of mediations assigned by the Virginia Department of Education; and

3. Is not an employee of the local educational agency or the Virginia Department of Education solely because the person is paid by the agency to serve as a mediator.

8VAC20-81-200. Complaint resolution procedures.

A. The Virginia Department of Education maintains and operates a complaint system that provides for the investigation and issuance of findings regarding violations of the rights of parents or children with disabilities. The Superintendent of Public Instruction or designee is responsible for the operation of the complaint system. (34 CFR 300.151)

B. A complaint may be filed with the Virginia Department of Education by any individual, organization, or an individual from another state and shall: (34 CFR 300.151 and 34 CFR 300.153)

1. Be in writing;

2. Include the signature and contact information for the complainant;

3. Contain a statement that a local educational agency has violated the Act or these special education regulations;

4. Include the facts upon which the complaint is based;

5. If alleging violations with respect to a specific child, include:

a. The name and address of the residence of the child;

b. The name of the school the child is attending;

c. In the case of a homeless child or youth (within the meaning of §725(2) of the McKinney-Vento Homeless Act (42 USC 11434a(2)), available contact information for the child, and the name of the school the child is attending;

d. A description of the nature of the problem of the child, including facts relating to the problem; and

e. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed;

6. Address an action that occurred not more than one year prior to the date the complaint is received;

7. Contain all relevant documents; and

8. Be provided simultaneously to the local educational agency or public agency serving the child.

C. Within seven days of a receipt of a complaint, the Virginia Department of Education determines if the complaint is sufficient according to subsection B of this section. If it is determined that the complaint is insufficient, the Virginia Department of Education notifies the complainant and the local educational agency in writing. The complainant is given directions for resubmission of the complaint to the Virginia Department of Education.

D. Upon receipt of a valid complaint, the Virginia Department of Education shall initiate an investigation to determine whether the local educational agency is in compliance with applicable law and regulations in accordance with the following procedures: (34 CFR 300.151 and 34 CFR 300.152)

1. Within seven business days of the receipt of a valid complaint, the Virginia Department of Education shall send written notification to each complainant and the local educational agency against which the violation has been alleged, acknowledging receipt of a complaint.

a. The notification sent to the local educational agency shall include:

(1) A copy of the complaint;

(2) An offer of technical assistance in resolving the complaint;

(3) A statement that the local educational agency has the opportunity to propose, at the local educational agency's discretion, a resolution of the complaint;

(4) Notification of the opportunity for the parties to engage voluntarily in mediation;

(5) A request that the local educational agency submit within 10 business days of receipt of the letter of notification either:

(a) Written documentation that the complaint has been resolved; or

(b) If the complaint was not resolved, a written response, including all requested documentation. A copy of the response, along with all submitted documentation, shall simultaneously be sent by the local educational agency to the parents(s) of the child who is the subject of the complaint or their attorney. If the complaint was filed by another individual, the local educational agency shall also simultaneously send the response and submitted documentation to that individual if a release signed by the parent(s) has been provided.

b. The notification sent to the complainant and the local educational agency shall provide the complainant and the local educational agency with an opportunity to submit additional information about the allegations in the complaint, either orally or in writing. The Virginia

Department of Education shall establish a timeline in the notification letter for submission of any additional information so as not to delay completing the investigation within the 60-day regulatory timeline.

c. If the complaint is filed by an individual other than the child's parent(s) and/or their legal counsel, the Virginia Department of Education sends written notification to the complainant acknowledging receipt of the complaint. The complainant is notified that the parent will be informed of the receipt of the complaint and provided a copy of the complaint and pertinent correspondence. The Virginia Department of Education's final determination of compliance or noncompliance will be issued to the parent(s) and the local educational agency, unless the complainant has obtained and filed the appropriate consent for release of information.

2. If a reply from the local educational agency is not filed with the Virginia Department of Education within 10 business days of the receipt of the notice, the Virginia Department of Education shall send a second notice to the local educational agency advising that failure to respond within seven business days of the date of such notice will result in review by the Superintendent of Public Instruction or designee for action regarding appropriate sanctions.

3. The Virginia Department of Education shall review the complaint and reply filed by the local educational agency to determine if further investigation or corrective action needs to be taken.

a. If the complaint is also the subject of a due process hearing or if it contains multiple issues of which one or more are part of that due process hearing, the Virginia Department of Education shall:

(1) Set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing; and

(2) Resolve any issue in the complaint that is not a part of the due process hearing involving the same parties.

b. If an issue raised in the complaint has previously been decided in a due process hearing involving the same parties, the Virginia Department of Education shall inform the complainant that the due process hearing decision is binding.

c. The Virginia Department of Education shall resolve a complaint alleging that the local educational agency has failed to implement a due process hearing decision.

4. During the course of the investigation, the Virginia Department of Education shall:

a. Conduct an investigation of the complaint that shall include a complete review of all relevant documentation

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and may include interviews with appropriate individuals, and an independent on-site investigation, if necessary.

b. Consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards.

c. Make a determination of compliance or noncompliance on each issue in the complaint based upon the facts and applicable law, regulations, or standards and notify the parties in writing of the findings and the bases for such findings.

(1) The Virginia Department of Education has 60 calendar days after the valid written complaint is received to carry out the investigation and to resolve the complaint.

(2) An extension of the 60-calendar-day time limit may occur if exceptional circumstances exist with respect to a particular complaint or if the parties involved agree to extend the time to engage in mediation or other alternative means of dispute resolution.

(3) Both parties to the complaint will be notified in writing by the Virginia Department of Education of the exceptional circumstances, if applicable, and the extended time limit.

d. Ensure that the Virginia Department of Education's final decision is effectively implemented, if needed, through:

(1) Technical assistance activities;

(2) Negotiations; and

(3) Corrective actions to achieve compliance.

e. Report findings of noncompliance and corresponding recommendations to the party designated by the Superintendent of Public Instruction for review, or where appropriate, directly to the Superintendent of Public Instruction for further action.

f. Notify the parties in writing of any needed corrective actions and the specific steps that shall be taken by the local educational agency to bring it into compliance with applicable timelines.

5. In resolving a complaint in which a failure to provide appropriate services is found, the Virginia Department of Education shall address:

a. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child, including compensatory services, monetary reimbursement, or other corrective action appropriate to the needs of the child; and

b. Appropriate future provision of services for all children with disabilities.

E. Parties to the complaint procedures shall have the right to appeal the final decision to the Virginia Department of Education within 30 calendar days of the issuance of the decision in accordance with procedures established by the Virginia Department of Education.

F. When the local educational agency develops a plan of action to correct the violations, such plan shall include timelines to correct violations not to exceed 30 business days unless circumstances warrant otherwise. The plan of action will also include a description of all changes contemplated and shall be subject to approval of the Virginia Department of Education.

G. If the local educational agency does not come into compliance within the period of time set forth in the notification, the matter will be referred to the Superintendent of Public Instruction or designee for an agency review and referral to the Virginia Board of Education, if deemed necessary.

H. If, after reasonable notice and opportunity for a hearing by the Virginia Board of Education, under the provisions of 8VAC20-81-290, it is determined that the local educational agency has failed to comply with applicable laws and regulations and determines that compliance cannot be secured by voluntary means, then the Superintendent of Public Instruction shall issue a decision in writing stating that state and federal funds for the education of children with disabilities shall not be made available to that local educational agency until there is no longer any failure to comply with the applicable law or regulation. (§22.1-214 E of the Code of Virginia)

I. The Virginia Department of Education's complaint procedures shall be widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities. (34 CFR 300.151)

8VAC20-81-210. Due process hearing.

A. The Virginia Department of Education administers a special education due process hearing system to resolve disputes between parents and local educational agencies regarding the: (§22.1-214 of the Code of Virginia; 34 CFR 300.121 and 34 CFR 300.507 through 34 CFR 300.518)

1. Identification of a child with a disability, including initial eligibility, any change in categorical identification, and any partial or complete termination of special education and related services;

2. Evaluation of a child with a disability (including disagreements regarding payment for an independent educational evaluation);

3. Educational placement and services of the child; and

4. Provision of a free appropriate public education to the child.

B. In administering the special education due process hearing system, the Virginia Department of Education establishes procedures for:

1. Recruitment, selection, and appointment of special education hearing officers. All special education hearing officers shall possess the following minimum qualifications for appointment to the special education hearing officers' list:

a. Active membership in good standing in the Virginia State Bar;

b. Active practice of law for at least five years. In order to satisfy this requirement, the applicant shall have completed five years of active practice of law with two of these years in Virginia. For purposes of this section, the active practice of law exists when, on a regular and systematic basis, in the relation of attorney and client, one furnishes to another advice or service under circumstances that imply his possession and use of legal knowledge and skill. If not presently engaged in the active practice of law, the applicant shall, in addition to the requirements of this section, have previously served as a hearing officer, administrative law judge, or possess extensive prior experience with administrative hearings;

c. Demonstrated knowledge of federal and state laws and regulations regarding special education;

d. Prior experience with administrative hearings or knowledge of administrative law;

e. Demonstrated legal writing ability;

f. Willingness to travel to any area of the state to conduct hearings; and

g. Completion of training programs, as required by the Virginia Department of Education.

2. Providing special education hearing officers specialized training on the federal and state special education law and regulations, as well as associated laws and regulations impacting children with disabilities, knowledge of disabilities and special education programs, case law, management of hearings, and decision writing.

3. Evaluation, continued eligibility, and disqualification requirements of special education hearing officers.

a. In considering whether a special education hearing officer will be removed from the list of eligible special education hearing officers, the Virginia Department of Education shall consider allegations of:

(1) Continuous pattern of untimely decisions, or failure to render decision within regulatory time frames;

(2) Unprofessional demeanor;

(3) Inability to conduct orderly hearings;

(4) Inability to conduct hearing in conformity with the federal and state laws and regulations regarding special education;

(5) Improper ex parte contacts;

(6) Violations of due process requirements;

(7) Mental or physical incapacity;

(8) Unjustified refusal to accept assignments;

(9) Failure to complete training requirements as outlined by the Virginia Department of Education; or

(10) Professional disciplinary action.

b. When one or more of the allegations outlined in subdivision 3 a of this subsection have been established by the Virginia Department of Education, the special education hearing officer may be removed from the Virginia Department of Education's list of special education hearing officers.

c. A special education hearing officer may be disqualified for a specific case.

(1) A special education hearing officer shall voluntarily disqualify himself and withdraw from any case in which he cannot accord a fair and impartial hearing or consideration, or when required by applicable rules governing the practice of law in Virginia.

(2) Any party may request disqualification of a special education hearing officer by filing an affidavit with the Virginia Department of Education prior to taking evidence at a due process hearing.

(a) The affidavit shall state, with particularity, the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded, or the applicable rule of practice requiring disqualification.

(b) The special education hearing officer shall provide a response no less than 10 calendar days prior to the due process hearing. No oral hearing is permitted.

(c) The filing of such an affidavit shall not stay the proceedings or filing requirements in any way except the due process hearing may not be held.

(d) If the Virginia Department of Education determines that the special education hearing officer is not disqualified, the due process hearing shall proceed as scheduled.

(e) If the special education hearing officer is disqualified, the Virginia Department of Education shall appoint a

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new special education hearing officer so that the hearing can proceed as scheduled whenever possible.

4. Reviewing and analyzing the decisions of special education hearing officers, and the requirement for special education hearing officers to reissue decisions, relative to correct use of citations, readability, and other errors such as incorrect names or conflicting data, but not errors of law that are reserved for appellate review.

C. Filing the request for a due process hearing. If any of the following provisions are challenged by one of the parties in a due process hearing, the special education hearing officer determines the outcome of the case going forward.

1. The request for due process shall allege a violation that happened not more than two years before the parent(s) or the local educational agency knew or should have known about the alleged action that forms the basis of the request for due process. This timeline does not apply if the request for a due process hearing could not be filed because: (34 CFR 300.507(b) and 34 CFR 300.511(e) and (f))

a. The local educational agency specifically misrepresented that it had resolved the issues identified in the request; or

b. The local educational agency withheld information that it was required to provide under the IDEA.

2. A local educational agency may initiate a due process hearing to resolve a disagreement when the parent(s) withholds or refuses consent for an evaluation or an action that requires parental consent to provide services to a student who has been identified as a student with a disability or who is suspected of having a disability. However, a local educational agency may not initiate a due process hearing to resolve parental withholding or refusing consent for the initial provision of special education to the child. (34 CFR 300.300(a)(3)(i) and 34 CFR 300.300(b)(3))

3. In circumstances involving disciplinary actions, the parent(s) of a student with a disability may request an expedited due process hearing if the parent(s) disagrees with: (34 CFR 300.532)

a. The manifestation determination regarding whether the child's behavior was a manifestation of the child's disability; or

b. Any decision regarding placement under the disciplinary procedures.

4. In circumstances involving disciplinary actions, the local educational agency may request an expedited hearing if the school division believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others. (34 CFR 300.532)

D. Procedure for requesting a due process hearing. (34 CFR 300.504(a)(2), 34 CFR 300.507, 34 CFR 300.508 and 34 CFR 300.511)

1. A request for a hearing shall be made in writing to the local educational agency and the Virginia Department of Education.

a. If the local educational agency initiates the due process hearing, the local educational agency shall advise the parent(s) and the Virginia Department of Education in writing of this action.

b. If the request is received solely by the Virginia Department of Education, the Virginia Department of Education shall immediately notify the local educational agency by telephone or by facsimile and forward a copy of the request to the local educational agency as soon as reasonably possible, including those cases where mediation is requested.

c. The request for a hearing shall be kept confidential by the local educational agency and the Virginia Department of Education.

2. A party may not have a due process hearing until that party or the attorney representing the party files a notice that includes:

a. The name of the child;

b. The address of the residence of the child (or available contact information in the case of a homeless child);

c. The name of the school the child is attending;

d. A description of the nature of the child's problem relating to the proposed or refused initiation or change, including facts relating to the problem; and

e. A proposed resolution of the problem to the extent known and available to the parent(s) at the time of the notice.

3. The due process notice shall be deemed sufficient unless the party receiving the notice notifies the special education hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements listed in subdivision 2 of this subsection.

4. The party receiving the notice may challenge the sufficiency of the due process notice by providing a notification of the challenge to the special education hearing officer within 15 calendar days of receipt the due process request. A copy of the challenge shall be sent to the other party and the Virginia Department of Education.

5. Within five calendar days of receipt of the notification challenging the sufficiency of the due process notice, the special education hearing officer shall determine on the face of the notice whether the notification meets the requirements in subdivision 2 of this subsection.

6. The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed as described in subdivision 2 of this subsection.

If the local educational agency is not the initiating party to the due process hearing proceeding, the special education hearing officer has the discretionary authority to permit the local educational agency to raise issues at the hearing that were not raised in the parent's(s') request for due process in light of particular facts and circumstances of the case.

7. The local educational agency shall upon receipt of a request for a due process hearing, inform the parent(s) of the availability of mediation described in 8VAC20-81-190 and of any free or low-cost legal and other relevant services available in the area. The local educational agency also shall provide the parent(s) with a copy of the procedural safeguards notice upon receipt of the parent's(s') first request for a due process hearing in a school year.

E. Amendment of due process notice. (34 CFR 300.508(d)(3))

1. A party may amend its due process notice only if:

a. The other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a resolution meeting;

b. The special education hearing officer grants permission, except that the special education hearing officer may only grant such permission at any time not later than five calendar days before a due process hearing occurs.

2. The applicable timeline for a due process hearing under this part shall begin again at the time the party files an amended notice, including the timeline for resolution sessions.

F. Assignment of the special education hearing officer. (34 CFR 300.511)

1. Within five business days of receipt of the request for a nonexpedited hearing and three business days of receipt of the request for an expedited hearing:

a. The local educational agency shall contact the Virginia Department of Education for the appointment of the special education hearing officer.

b. The Virginia Department of Education contacts the special education hearing officer to confirm availability, and upon acceptance, notifies the local educational agency of the appointment.

c. The local educational agency notifies the special education hearing officer in writing, with a copy to the parent(s) and the Virginia Department of Education of the appointment.

2. Upon request, the Virginia Department of Education shall share information on the qualifications of the special education hearing officer with the parent(s) and the local educational agency.

3. Either party has five business days after notice of the appointment is received or the basis for the objection becomes known to the party to object to the appointment by presenting a request for consideration of the objection to the special education hearing officer.

a. If the special education hearing officer's ruling on the objection does not resolve the objection, then within five business days of receipt of the ruling the party may proceed to file an objection with the Virginia Department of Education. The failure to file a timely objection serves as a waiver of objections that were known or should have been known to the party.

b. The filing of a request for removal or disqualification shall not stay the proceedings or filing requirements in any way except that the hearing may not be conducted until the Virginia Department of Education issues a decision on the request in accordance with the Virginia Department of Education's procedures.

c. If a special education hearing officer recuses himself or is otherwise disqualified, the Virginia Department of Education ensures that another special education hearing officer is promptly appointed.

4. A hearing shall not be conducted by a person who:

a. Has a personal or professional interest that would conflict with that person's objectivity in the hearing;

b. Is an employee of the Virginia Department of Education or the local educational agency that is involved in the education and care of the child. A person who otherwise qualifies to conduct a hearing is not an employee of the agency solely because he is paid by the agency to serve as a special education hearing officer.

c. Represents schools or parents in any matter involving special education or disability rights, or is an employee of any parent rights agency or organization, or disability rights agency or organization.

5. A special education hearing officer shall:

a. Possess knowledge of, and the ability to understand, the provisions of the Act, federal and state regulations pertaining to the Act, and legal interpretations of the Act by federal and state courts;

b. Possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

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c. Possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

G. Duration of the special education hearing officer's authority.

1. The special education hearing officer's authority begins with acceptance of the case assignment.

2. The special education hearing officer has authority over a due process proceeding until:

a. Issuance of the special education hearing officer's decision;

b. The Virginia Department of Education revokes such authority by removing or disqualifying the special education hearing officer.

H. Child's status during administrative or judicial proceedings. (34 CFR 300.518; 34 CFR 300.533)

1. Except as provided in 8VAC20-81-160, during the pendency of any administrative or judicial proceeding, the child shall remain in the current educational placement unless the parent(s) of the child and local educational agency agree otherwise;

2. If the proceeding involves an application for initial admission to public school, the child, with the consent of the parent(s), shall be placed in the public school until the completion of all the proceedings;

3. If the decision of a special education hearing officer agrees with the child's parent(s) that a change of placement is appropriate, that placement shall be treated as an agreement between the local educational agency and the parent(s) for the purposes of subdivision 1 of this section;

4. The child's placement during administrative or judicial proceedings regarding a disciplinary action by the local educational agency shall be in accordance with 8VAC20-81-160;

5. The child's placement during administrative or judicial proceedings regarding a placement for noneducational reasons by a Comprehensive Services Act team shall be in accordance with 8VAC20-81-150; or

6. If the proceeding involves an application for initial services under Part B of the Act from Part C and the child is no longer eligible for Part C services because the child has turned three, the school division is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services, the school division shall provide those special education and related services that are not in dispute between the agency and the school division.

I. Rights of parties in the hearing. (§22.1-214 C of the Code of Virginia; 34 CFR 300.512)

1. Any party to a hearing has the right to:

a. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

b. Present evidence and confront, cross-examine, and request that the special education hearing officer compel the attendance of witnesses;

c. Move that the special education hearing officer prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

d. Obtain a written or, at the option of the parent(s), electronic, verbatim record of the hearing; and

e. Obtain written or, at the option of the parent(s), electronic findings of fact and decisions.

2. Additional disclosure of information shall be given as follows:

a. At least five business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing; and

b. A special education hearing officer may bar any party that fails to comply with subdivision 2 a of this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

3. Parental rights at hearings.

a. A parent(s) involved in a hearing shall be given the right to:

(1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public.

b. The record of the hearing and the findings of fact and decisions shall be provided at no cost to the parent(s).

J. Responsibilities of the Virginia Department of Education. The Virginia Department of Education shall: (34 CFR 300.513(d), 34 CFR 300.509 and 34 CFR 300.511)

1. Maintain and monitor the due process hearing system and establish procedures for its operation;

2. Ensure that the local educational agency discharges its responsibilities in carrying out the requirements of state and federal statutes and regulations;

3. Develop and disseminate a model form to be used by the parent(s) to give notice in accordance with the contents of the notice listed in subdivision C 2 of this section;

4. Maintain and ensure that each local educational agency maintains a list of persons who serve as special education hearing officers. This list shall include a statement of the qualifications of each special education hearing officer;

5. Provide findings and decisions of all due process hearings to the state special education advisory committee and to the public after deleting any personally identifiable information; and

6. Ensure that noncompliance findings identified through due process or court action are corrected as soon as possible, but in no case later than one year from identification.

K. Responsibilities of the parent. In a due process hearing, the parent(s) shall: (34 CFR 300.512)

1. Decide whether the hearing will be open to the public;

2. Make timely and necessary responses to the special education hearing officer personally or through counsel or other authorized representatives;

3. Assist in clarifying the issues for the hearing and participate in the pre-hearing conference scheduled by the special education hearing officer;

4. Provide information to the special education hearing officer to assist in the special education hearing officer's administration of a fair and impartial hearing;

5. Provide documents and exhibits necessary for the hearing within required timelines; and

6. Comply with timelines, orders, and requests of the special education hearing officer.

L. Responsibilities of the local educational agency. The local educational agency shall: (34 CFR 300.504, 34 CFR 300.506, 34 CFR 300.507 and 34 CFR 300.511)

1. Maintain a list of the persons serving as special education hearing officers. This list shall include a statement of the qualifications of each special education hearing officer;

2. Upon request, provide the parent(s) a form for use to provide notice that they are requesting a due process hearing;

3. Provide the parent(s) a copy of their procedural safeguards upon receipt of the parent's(s)' first request for a due process hearing in a school year;

4. Inform the parent(s) at the time the request is made of the availability of mediation;

5. Inform the parent(s) of any free or low-cost legal and other relevant services if the parent(s) requests it, or anytime the parent(s) or the local educational agency initiates a hearing;

6. Assist the special education hearing officer, upon request, in securing the location, transcription, and recording equipment for the hearing;

7. Make timely and necessary responses to the special education hearing officer;

8. Assist in clarifying the issues for the hearing and participate in the pre-hearing conference scheduled by the special education hearing officer;

9. Upon request, provide information to the special education hearing officer to assist in the special education hearing officer's administration of the hearing;

10. Provide documents and exhibits necessary for the hearing within required timelines;

11. Comply with timelines, orders, and requests of the special education hearing officer;

12. Maintain a file, which is a part of the child's scholastic record, containing communications, exhibits, decisions, and mediation communications, except as prohibited by laws or regulations;

13. Forward all necessary communications to the Virginia Department of Education and parties as required;

14. Notify the Virginia Department of Education when a special education hearing officer's decision has been appealed to court by either the parent(s) or the local educational agency;

15. Forward the record of the due process proceeding to the appropriate court for any case that is appealed; and

16. Provide the Virginia Department of Education, upon request, with information and documentation that noncompliance findings identified through due process or court action are corrected as soon as possible but in no case later than one year from issuance of the special education hearing officer's decision.

M. Responsibilities of the special education hearing officer. The special education hearing officer shall: (34 CFR 300.515, 34 CFR 300.511, 34 CFR 300.513 and 34 CFR 300.532)

1. Within five business days of agreeing to serve as the special education hearing officer, secure a date, time, and location for the hearing that are convenient to both parties, and notify both parties to the hearing and the Virginia Department of Education, in writing, of the date, time, and location of the hearing;

2. Ascertain whether the parties will have attorneys or others assisting them at the hearing. The special education

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hearing officer shall send copies of correspondence to the parties or their attorneys;

3. Conduct a prehearing conference via a telephone conference call or in person unless the special education hearing officer deems such conference unnecessary. The prehearing conference may be used to clarify or narrow issues and determine the scope of the hearing. If a prehearing conference is not held, the special education hearing officer shall document in the written prehearing report to the Virginia Department of Education the reason for not holding the conference;

4. Upon request by one of the parties to schedule a prehearing conference, determine the scope of the conference and conduct the conference via telephone call or in person. If the special education hearing officer deems such conference unnecessary, the special education hearing officer shall document in writing to the parties, with copy to the Virginia Department of Education, the reason(s) for not holding the conference;

5. At the prehearing stage:

a. Discuss with the parties the possibility of pursuing mediation and review the options that may be available to settle the case; and

b. Document in writing to the parties, with copy to the Virginia Department of Education, prehearing determinations including a description of the right to appeal the case directly to either a state or federal court;

6. Monitor the mediation process, if the parties agree to mediate, to ensure that mediation is not used to deny or delay the right to a due process hearing, that parental rights are protected, and that the hearing is concluded within regulatory timelines;

7. Ascertain from the parent(s) whether the hearing will be open to the public;

8. Ensure that the parties have the right to a written or, at the option of the parent(s), an electronic verbatim record of the proceedings and that the record is forwarded to the local educational agency for the file after making a decision;

9. Receive a list of witnesses and documentary evidence for the hearing (including all evaluations and related recommendations that each party intends to use at the hearing) no later than five business days prior to the hearing;

10. Ensure that the local educational agency has appointed a surrogate parent in accordance with 8VAC20-81-220 when the parent(s) or guardian is not available or cannot be located;

11. Ensure that an atmosphere conducive to fairness is maintained at all times in the hearing;

12. Not require the parties or their representatives to submit briefs as a condition of rendering a decision. The special education hearing officer may permit parties to submit briefs, upon the parties' request;

13. Base findings of fact and decisions solely upon the preponderance of the evidence presented at the hearing and applicable state and federal law and regulations;

14. Report findings of fact and decisions in writing to the parties but if a party is represented by an attorney, then to their attorney, and the Virginia Department of Education. If the hearing is an expedited hearing, the special education hearing officer may issue an oral decision at the conclusion of the hearing, followed by a written decision within 10 school days of the hearing being held;

15. Include in the written findings:

a. Findings of fact relevant to the issues that are determinative of the case;

b. Legal principles upon which the decision is based, including references to controlling case law, statutes, and regulations;

c. An explanation of the basis for the decision for each issue that is determinative of the case; and

d. If the special education hearing officer made findings that required relief to be granted, then an explanation of the relief granted may be included in the decision;

16. Subject to the procedural determinations described in subdivision 17 of this subsection, the decision made by a special education hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education;

17. In matters alleging a procedural violation, a special education hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies:

a. Impeded the child's right to a free appropriate public education;

b. Significantly impeded the parent's(s') opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents' child; or

c. Caused a deprivation of educational benefits.

Nothing in this subdivision shall be construed to preclude a special education hearing officer from ordering a local educational agency to comply with procedural requirements under 34 CFR 300.500 through 34 CFR 300.536;

18. Maintain a well-documented record and return the official record to the local educational agency upon conclusion of the case; and

19. Determine in a hearing regarding a manifestation determination whether the local educational agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements in 8VAC20-81-160.

N. Authority of the special education hearing officer. The special education hearing officer has the authority to: (§22.1-214 B of the Code of Virginia; 34 CFR 300.515, 34 CFR 300.512 and 34 CFR 300.532)

1. Exclude any documentary evidence that was not provided and any testimony of witnesses who were not identified at least five business days prior to the hearing;

2. Bar any party from introducing evaluations or recommendations at the hearing that have not been disclosed to all other parties at least five business days prior to the hearing without the consent of the other party;

3. Issue subpoenas requiring testimony or the productions of books, papers, and physical or other evidence:

a. The special education hearing officer shall rule on any party's motion to quash or modify a subpoena. The special education hearing officer shall issue the ruling in writing to all parties with copy to the Virginia Department of Education.

b. The special education hearing officer may request an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held.

c. Any person so subpoenaed may petition the circuit court for a decision regarding the validity of such subpoena if the special education hearing officer does not quash or modify the subpoena after objection;

4. Administer an oath to witnesses testifying at a hearing and require all witnesses to testify under oath or affirmation when testifying at a hearing;

5. Stop hostile or irrelevant pursuits in questioning and require that the parties and their attorneys, advocates, or advisors comply with the special education hearing officer's rules and with relevant laws and regulations;

6. Excuse witnesses after they testify to limit the number of witnesses present at the same time or sequester witnesses during the hearing;

7. Refer the matter in dispute to a conference between the parties when informal resolution and discussion appear to be desirable and constructive. This action shall not be used to deprive the parties of their rights and shall be exercised only when the special education hearing officer determines that the best interests of the child will be served;

8. Require an independent educational evaluation of the child. This evaluation shall be at public expense and shall be conducted in accordance with 8VAC20-81-170;

9. a. At the request of either party for a nonexpedited hearing, grant specific extensions of time beyond the periods set out in this chapter, if in the best interest of the child. This action shall in no way be used to deprive the parties of their rights and shall be exercised only when the requesting party has provided sufficient information that the best interests of the child will be served by the grant of an extension. The special education hearing officer may grant such requests for cause, but not for personal attorney convenience. Changes in hearing dates or timeline extensions shall be noted in writing and sent to all parties and to the Virginia Department of Education.

b. In instances where neither party requests an extension of time beyond the period set forth in this chapter, and mitigating circumstances warrant an extension, the special education hearing officer shall review the specific circumstances and obtain the approval of the Virginia Department of Education to the extension;

10. Take action to move the case to conclusion, including dismissing the pending proceeding if either party refuses to comply in good faith with the special education hearing officer's orders;

11. Set guidelines regarding media coverage if the hearing is open to the public;

12. Enter a disposition as to each determinative issue presented for decision and identify and determine the prevailing party on each issue that is decided; and

13. Hold an expedited hearing when a parent of a child with a disability disagrees with any decision regarding a change in placement for a child who violates a code of student conduct, or a manifestation determination, or a local educational agency believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others.

a. The hearing shall occur within 20 school days of the date the due process notice is received. The special education hearing officer shall make a determination within 10 school days after the hearing.

b. Unless the parents and LEA agree in writing to waive the resolution meeting or agree to use the mediation process:

(1) A resolution meeting shall occur within seven days of receiving notice of the due process notice; and

(2) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the due process notice.

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c. Once a determination is made, the special education hearing officer may:

(1) Return the child with a disability to the placement from which the child was removed if the special education hearing officer determines that the removal was a violation of special education disciplinary procedures or that the child's behavior was a manifestation of the child's disability; or

(2) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the special education hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

O. Timelines for nonexpedited due process hearings. (34 CFR 300.510 and 34 CFR 300.515)

1. Resolution meeting.

a. Within 15 days of receiving notice of the parent's(s) due process notice, and prior to the initiation of the due process hearing, the school division shall convene a meeting with the parent and the relevant member(s) of the IEP Team who have specific knowledge of the facts identified in the due process notice that:

(1) Includes a representative of the local educational agency who has decisionmaking authority on behalf of the local educational agency; and

(2) May not include an attorney of the local educational agency unless the parent is accompanied by an attorney.

b. The purpose of the meeting is for the parent of the child to discuss the due process issues, and the facts that form the basis of the due process request, so that the local educational agency has the opportunity to resolve the dispute that is the basis for the due process request.

c. The meeting described in subdivisions 1 a and 1 b of this subsection need not be held if:

(1) The parent and the local educational agency agree in writing to waive the meeting; or

(2) The parent and the local educational agency agree to use the mediation process described in this chapter.

d. The parent and the local educational agency determine the relevant members of the IEP Team to attend the meeting.

2. Resolution period.

a. If the local educational agency has not resolved the due process issues to the satisfaction of the parent within 30 calendar days of the receipt of the due process notice, the due process hearing may occur.

b. Except as provided in subdivision 3 of this subsection, the timeline for issuing a final decision begins at the expiration of this 30-calendar-day period.

c. Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding subdivisions 2 a and 2 b of this subsection, the failure of the parent filing a due process notice to participate in the resolution meeting delays the timelines for the resolution process and the due process hearing until the meeting is held.

d. If the local educational agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented as required to gain parental consent), the local educational agency may at the conclusion of the 30-calendar-day period, request that a special education hearing officer dismiss the parent's due process request.

e. If the local educational agency fails to hold the resolution meeting specified in subdivision 1 a of this subsection within 15 calendar days of receiving notice of a parent's request for due process or fails to participate in the resolution meeting, the parent may seek the intervention of a special education hearing officer to begin the due process hearing timeline.

3. Adjustments to 30-calendar-day resolution period. The 45-calendar-day timeline for the due process starts the day after one of the following events:

a. Both parties agree in writing to waive the resolution meeting;

b. After either the mediation or resolution meeting starts but before the end of the 30-calendar-day period, the parties agree in writing that no agreement is possible; or

c. If both parties agree in writing to continue the mediation at the end of the 30-calendar-day resolution period, but later, the parent or local educational agency withdraws from the mediation process.

4. Written settlement agreement. If a resolution to the dispute is reached at the meeting described in subdivisions 1 a and 1 b of this subsection, the parties shall execute a legally binding agreement that is:

a. Signed by both the parent and a representative of the local educational agency who has the authority to bind the local educational agency; and

b. Enforceable in any Virginia court of competent jurisdiction or in a district court of the United States.

5. Agreement review period. If the parties execute an agreement pursuant to subdivision 4 of this subsection, a party may void the agreement within three business days of the agreement's execution.

6. The special education hearing officer shall ensure that, not later than 45 calendar days after the expiration of the 30-calendar-day period under subdivision 2 or the adjusted time periods described in subdivision 4 of this subsection:

- a. A final decision is reached in the hearing; and
- b. A copy of the decision is mailed to each of the parties.

7. The special education hearing officer shall document in writing, within five business days, changes in hearing dates or extensions and send documentation to all parties and the Virginia Department of Education.

8. Each hearing involving oral arguments shall be conducted at a time and place that is reasonably convenient to the parent(s) and child involved.

9. The local educational agency is not required to schedule a resolution session if the local educational agency requests the due process hearing. The 45-day timeline for the special education hearing officer to issue the decision after the local educational agency's request for a due process hearing is received by the parent(s) and the Virginia Department of Education. However, if the parties elect to use mediation, the 30-day resolution process is still applicable.

P. Timelines for expedited due process hearings. (34 CFR 300.532(c))

1. The expedited due process hearing shall occur within 20 school days of the date the due process request is received. The special education hearing officer shall make a determination within 10 school days after the hearing.

2. Unless the parents and LEA agree in writing to waive the resolution meeting or agree to use the mediation process described in 8VAC20-81-190:

- a. A resolution meeting shall occur within seven days of receiving notice of the due process complaint; and
- b. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

3. Document in writing within five business days any changes in hearing dates and send documentation to all parties and the Virginia Department of Education.

Q. Costs of due process hearing and attorneys' fees. (34 CFR 300.517)

1. The costs of an independent educational evaluation, special education hearing officer, court reporters, and transcripts that are incidental to the hearing are shared equally by the local educational agency and the Virginia Department of Education. Costs for any of these services

incurred by a party for the specific benefit of that party's case are the responsibility of that party.

2. The local educational agency is responsible for its own attorneys' fees.

3. The parent(s) are responsible for their attorneys' fees. If the parent(s) is the prevailing party, the parent(s) has the right to petition either a state circuit court or a federal district court for an award of reasonable attorneys' fees as part of the costs.

4. A state circuit court or a federal district court may award reasonable attorneys' fees as part of the costs to the parent(s) of a child with a disability who is the prevailing party.

5. The court may award reasonable attorneys' fees only if the award is consistent with the limitations, exclusions, exceptions, and reductions in accordance with the Act and its implementing regulations and 8VAC20-81-310.

R. Right of appeal. (34 CFR 300.516)

1. A decision by the special education hearing officer in any hearing, including an expedited hearing, is final and binding unless the decision is appealed by a party in a state circuit court or federal district court within 90 days of the issuance of the decision. The appeal may be filed in either a state circuit court or a federal district court without regard to the amount in controversy. The district courts of the United States have jurisdiction over actions brought under §1415 of the Act without regard to the amount in controversy.

2. On appeal, the court receives the record of the administrative proceedings, hears additional evidence at the request of a party, bases its decision on a preponderance of evidence, and grants the relief that the court determines to be appropriate.

3. If the special education hearing officer's decision is appealed in court, implementation of the special education hearing officer's order is held in abeyance except in those cases where the special education hearing officer has agreed with the child's parent(s) that a change in placement is appropriate in accordance with subsection G of this section. In those cases, the special education hearing officer's order shall be implemented while the case is being appealed.

4. If the special education hearing officer's decision is not implemented, a complaint may be filed with the Virginia Department of Education for an investigation through the provisions of 8VAC20-81-200.

S. Nothing in this chapter prohibits or limits rights under other federal laws or regulations. (34 CFR 300.516)

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8VAC20-81-220. Surrogate parent procedures.

A. Role of surrogate parent. The surrogate parent appointed in accordance with this section represents the child in all matters relating to the identification, evaluation, or educational placement of the child; or the provision of a free appropriate public education to the child. (34 CFR 300.519(g))

B. Appointment of surrogate parents.

1. Children, aged two to 21, inclusive, who are suspected of having or determined to have disabilities do not require a surrogate parent if:

a. The biological parent(s) or guardians are allowing relatives or private individuals to act as a parent;

b. The child is in the custody of the local department of social services or a licensed child-placing agency, and termination of parental rights has been granted by a juvenile and domestic relations district court of competent jurisdiction in accordance with §16.1-283, 16.1-277.01, or 16.1-277.02 of the Code of Virginia. The foster parent for that child may serve as the parent of the child for the purposes of any special education proceedings; or

c. The child is in the custody of a local department of social services or a licensed child-placing agency, and a permanent foster care placement order has been entered by a juvenile and domestic relations district court of competent jurisdiction in accordance with §63.2-908 of the Code of Virginia. The permanent foster parent named in the order for that child may serve as the parent of the child for the purposes of any special education proceedings.

2. The local educational agency shall appoint a surrogate parent for a child, aged two to 21, inclusive, who is suspected of having or determined to have a disability when: (34 CFR 300.519(a))

a. No parent, as defined in 8VAC20-81-10, can be identified;

b. The local educational agency, after reasonable efforts, cannot discover the whereabouts of a parent;

c. The child is a ward of the state; or

d. The child is an unaccompanied homeless youth as defined in §725(6) of the McKinney-Vento Homeless Assistance Act (42 USC §1143a(6)) and §22.1-3 of the Code of Virginia.

3. The local educational agency shall appoint a surrogate parent as the educational representative for a child who reaches the age of majority if the local educational agency has received written notification that the child is not competent to provide informed consent in accordance with

8VAC20-81-180 C 3 or C 4 and no family member is available to serve as the child's educational representative.

4. If the child is a ward of the state, the judge overseeing the child's case may appoint a surrogate parent as the educational representative of the child. The appointed surrogate shall meet the requirements of subdivision D 1 c of this section. (34 CFR 300.519(c))

5. The local educational agency shall establish procedures for determining whether a child needs a surrogate parent. (34 CFR 300.519(b))

6. The local educational agency shall establish procedures for assigning a surrogate parent to an eligible child. The surrogate parent shall be appointed by the local educational agency superintendent or designee within 30 calendar days of the determination that a surrogate parent is necessary. (34 CFR 300.519(b) and (h))

a. The appointment having been effected, the local educational agency shall notify in writing:

(1) The child with a disability, aged two to 21, inclusive, as appropriate to the disability;

(2) The surrogate parent-appointee; and

(3) The person charged with responsibility for the child.

b. The surrogate parent serves for the duration of the school year for which the surrogate parent is appointed unless a shorter time period is appropriate given the content of the child's IEP.

c. If the child requires the services of a surrogate parent during the summer months, the local educational agency shall extend the appointment as needed, consistent with timelines required by law.

d. At the conclusion of each school year, the appointment of surrogate parents shall be renewed or not renewed following a review by the local educational agency.

7. Each local educational agency shall establish procedures that include conditions and methods for changing or terminating the assignment of a surrogate parent before that surrogate parent's appointment has expired. Established procedures shall provide the right to request a hearing to challenge the qualifications or termination if the latter occurs prior to the end of the term of appointment. The assignment of a surrogate parent may be terminated only when one or more of the circumstances occur as follows:

a. The child reaches the age of majority and rights are transferred to the child or to an educational representative who has been appointed for the child in accordance with the procedures in 8VAC20-81-180;

b. The child is found no longer eligible for special education services;

c. Legal guardianship for the child is transferred to a person who is able to carry out the role of the parent;

d. The parent(s), whose whereabouts were previously unknown, are now known and available; or

e. The appointed surrogate parent is no longer eligible according to subsection D of this section.

C. Identification and recruitment of surrogate parents.

1. The local educational agency shall develop and maintain a list of individuals within its jurisdiction who are qualified to serve as surrogate parents. It may be necessary for the local educational agency to go beyond jurisdictional limits in generating a list of potentially qualified surrogate parents.

2. Individuals who are not on the local educational agency list may be eligible to serve as surrogate parents, subject to the local educational agency's discretion. In such situations, the needs of the individual child and the availability of qualified persons who are familiar with the child and who would otherwise qualify shall be considerations in the local educational agency's determination of surrogate eligibility. Other factors that warrant the local educational agency's attention include:

a. Consideration of the appointment of a relative to serve as surrogate parent;

b. Consideration of the appointment of a foster parent who has the knowledge and skills to represent the child adequately;

c. Consideration of the appointment of a qualified person of the same racial, cultural, or linguistic background as the child; and

d. The appropriateness of the child's participation in the selection of the surrogate parent.

D. Qualifications of surrogate parents. (34 CFR 300.519(d), (e), and (f))

1. The local educational agency shall ensure that a person appointed as a surrogate:

a. Has no personal or professional interest that conflicts with the interest of the child;

b. Has knowledge and skills that ensure adequate representation of the child;

c. Is not an employee of the Virginia Department of Education, the local educational agency, or any other agency that is involved in the education or care of the child; and

d. Is of the age of majority.

2. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because the person is paid by the agency to serve as a surrogate parent.

3. If the child is an unaccompanied homeless youth, appropriate staff of an emergency shelter, transition shelter, independent living program, or street outreach program may be appointed as a temporary surrogate even though the staff member is an employee of an agency that is involved in the education or care of the child. The temporary surrogate shall otherwise meet the qualifications of a surrogate, and may serve only until a surrogate parent meeting all of the qualifications outlined in this section can be assigned.

E. Rights of surrogate parents. The surrogate parent, when representing the child's educational interest, has the same rights as those accorded to parents under this chapter. (34 CFR 300.519(g)).

8VAC20-81-230. Local educational agency administration and governance.

A. The local educational agency shall ensure that the rights and protections under this chapter are given to children with disabilities for whom it is responsible, including children placed in private schools.

B. Plans, applications, and reports. (§22.1-215 of the Code of Virginia; 34 CFR 300.200 and 34 CFR 300.212)

1. The local educational agency shall prepare annually and submit to the Virginia Department of Education an application for funding under Part B of the Act in accordance with the requirements outlined by the Virginia Department of Education. The annual plan shall include:

a. Assurances that the local educational agency has in effect policies and procedures for the provision of special education and related services in compliance with the requirements of the Act, the policies and procedures established by the Virginia Board of Education, and any other relevant federal and state laws and regulations;

b. A report indicating the extent to which the annual plan for the preceding period has been implemented;

c. Budgets outlining the use of the federal funds; and

d. A copy of the local school division's interagency agreement regarding the provision of special education and related services in a regional or local jail, if applicable, in accordance with subdivision G 2 of this section.

2. Prior to submission to the Virginia Department of Education, the annual plan shall be reviewed by the local school division's local advisory committee, and approved by the local school board. State-operated programs, the Virginia School for the Deaf and Blind at Staunton, and the

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Virginia School for the Deaf, Blind, and Multi-Disabled at Hampton shall submit their annual plan to the state special education advisory committee for review prior to submission to the Virginia Department of Education.

3. The local educational agency shall ensure that the annual plan, and all required special education policies and procedures, including the revisions to those policies and procedures, which are necessary for ensuring a free appropriate public education to a child, are available for public inspection.

C. Provision of or payment for special education and related services. (34 CFR 300.154(b))

1. If any public noneducational agency is otherwise obligated under federal or state law, regulation, or policy to provide or pay for any services that are also considered special education or related services that are necessary for ensuring a free appropriate public education to children with disabilities, the public noneducational agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement. A public noneducational agency may not disqualify an eligible service for Medicaid reimbursement because that service was provided in a school context.

2. If any public noneducational agency fails to provide or pay for the special education and related services described in subdivision 1 of this subsection, the local educational agency shall provide or pay for the services to the child in a timely manner. The local educational agency may then claim reimbursement for the services from the public noneducational agency that failed to provide or pay for the services and that agency shall reimburse the local educational agency in accordance with the terms of the interagency agreement described in subdivision 21 of 8VAC20-81-20.

D. Local advisory committee. A local advisory committee for special education, appointed by each local school board, shall advise the school board through the division superintendent.

1. Membership.

a. A majority of the committee shall be parents of children with disabilities or individuals with disabilities.

b. The committee shall include representation of gender and the ethnic population of the local school division.

2. The functions of the local advisory committee shall be as follows:

a. Advise the local school division of needs in the education of children with disabilities;

b. Participate in the development of priorities and strategies for meeting the identified needs of children with disabilities;

c. Submit periodic reports and recommendations regarding the education of children with disabilities to the division superintendent for transmission to the local school board;

d. Assist the local school division in interpreting plans to the community for meeting the special needs of children with disabilities for educational services;

e. Review the policies and procedures for the provision of special education and related services prior to submission to the local school board; and

f. Participate in the review of the local school division's annual plan, as outlined in subdivision B 2 of this section.

3. Public notice shall be published annually listing the names of committee members and including a description of ways in which interested parties may express their views to the committee.

4. Committee meetings shall be held at least four times in a school year and shall be open to the public.

E. Regional special education programs. (§22.1-218 of the Code of Virginia; Jointly Owned and Operated Schools and Jointly Operated Programs (8VAC20-280))

1. If it becomes necessary for local school divisions to develop regional programs to serve children with disabilities residing within their jurisdiction, such regional programs shall be provided in accordance with the least restrictive environment requirements specified in 8VAC20-81-130.

2. If local school divisions elect to participate in an approved regional program for the provision of special education and related services for certain children with disabilities, a joint board shall be established to manage and control the jointly owned or operated program, center, or school. Establishment of the joint board and administration of the jointly owned and operated program shall be conducted in accordance with the Virginia Board of Education regulations governing such programs.

3. Each joint board shall appoint a qualified director who shall be the administrative head of the regional program. The director shall be responsible for the administration of programs and services that are approved by the joint board.

F. Transition from infant and toddler programs to early childhood special education programs. (34 CFR 300.124)

1. Children who are participating in early intervention programs under Part C of the Act and who will participate in preschool programs under Part B shall be afforded a smooth and effective transition to the preschool programs in a manner consistent with the Virginia lead agency's Part C early intervention policies and procedures.

2. The local school division shall participate in transition planning conferences when notified by the designated local Part C early intervention agency (not less than 90 days and not more than nine months before the child is eligible for preschool services), in accordance with 34 CFR 303.148(b).

3. A child with a disability whose second birthday falls on or before September 30 may begin attending Part B preschool programs at the start of the school year if:

- a. The child meets the Part B eligibility criteria; and
- b. An IEP has been developed and signed by the parent(s).

G. Programs for children with disabilities in regional or local jails. (34 CFR 300.121 and 34 CFR 300.122)

1. Each local school division with a regional or local jail in its jurisdiction shall be responsible for the provision of special education and related services to all eligible children with disabilities incarcerated in the jail for more than 10 calendar days.

2. Each local school division with a regional or local jail in its jurisdiction shall establish an interagency agreement with the sheriff or jail administrator responsible for the regional or local jail. The interagency agreement shall address staffing and security issues associated with the provision of special education and related services in the jail. A copy of this agreement shall be submitted with the annual plan specified in subsection B of this section. (34 CFR 300.121 and 34 CFR 300.122)

H. Each local educational agency shall cooperate with the U.S. Department of Education's efforts under §1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the states, health and educational information regarding those children. (34 CFR 300.213)

I. Early Intervening Services. Each local educational agency shall implement early intervening services in accordance with the provisions of 8VAC20-81-260 H. (34 CFR 300.226)

J. Access to instructional materials.

1. Each local educational agency shall ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner. (34 CFR 300.172(b) and (c))

2. To meet the requirements of subdivision 1 of this subsection for blind persons or other persons with print disabilities, the local educational agency may coordinate with the National Instructional Materials Access Center (NIMAC). (34 CFR 300.172(a) and (c))

- a. The local educational agency shall provide an assurance to the Virginia Department of Education that

the local educational agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner. This assurance shall be provided as part of the Annual Plan requirements outlined in subsection B of this section.

b. Each local educational agency shall inform the Virginia Department of Education on an annual basis whether or not it chooses to coordinate with the NIMAC.

c. If the local educational agency coordinates with the NIMAC, the agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for the purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to do the following:

(1) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(2) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

d. The requirements of subdivision J 2 c of this section shall apply to print instructional materials published after July 19, 2006.

3. Nothing in this subsection relieves a local educational agency of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but who are not included under the definition of blind or other persons with print disabilities or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner. (34 CFR 300.172(b))

4. Definitions applicable to this subsection.

a. The term "timely manner" has the same meaning as the defined in 8VAC20-81-10.

b. The term, "blind or other person with print disabilities" means children with disabilities who qualify to receive books and other publications produced in specialized formats. A child with a disability qualifies under this provision if the child meets one of the following criteria: (2 USC §135a; 36 CFR 701.6(b)(1) and 34 CFR 300.172(a) and (e))

(1) Blind person whose visual acuity, as determined by competent authority, is 20/200 or less in the better eye with correcting glasses, or whose widest diameter of visual field subtends an angular distance no greater than 20 degrees;

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(2) Person whose visual disability, with correction and regardless of optical measurement, is certified by competent authority as preventing the reading of standard printed material;

(3) Person certified by competent authority as unable to read or unable to use standard printed material as a result of physical limitation; or

(4) Person certified by competent authority as having a reading disability resulting from organic dysfunction and of sufficient severity to prevent their reading printed material in a normal manner.

c. The term "competent authority" is defined as follows: (2 USC §135a; 36 CFR 701.6(b)(2))

(1) In cases of blindness, visual disability or physical limitations: doctors of medicine, doctors of osteopathy, ophthalmologists, optometrists, registered nurses, therapists, professional staff of hospitals, institutions, and public or welfare agencies (e.g., social workers, case workers, counselors, rehabilitation teachers, and superintendents).

(2) In the case of a reading disability from organic dysfunction: doctors of medicine who may consult with colleagues in associated disciplines.

d. The term "print instructional materials" means printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by the Virginia Department of Education or the local educational agency for use by students in the classroom. (20 USC §1474(e)(3)(C))

e. The term "specialized formats" has the meaning given the term in 17 USC §121(d)(3), and means Braille, audio, or digital text that is exclusively for use by blind or other persons with disabilities, and with respect to print instructional materials, include large print formats when such materials are distributed exclusively for use by blind or other persons with disabilities. (20 USC §1474(e)(3)(D))

Part IV Funding

8VAC20-81-240. Eligibility for funding.

A. Each local school division and state-operated program shall maintain current policies and procedures and supporting documentation to demonstrate compliance with the Act and the Virginia Board of Education regulations governing the provision of special education and related services, licensure and accreditation. Changes to the local policies and procedures shall be made as determined by local need, as a result of changes in state or federal laws or regulations, as a result of required corrective action, or as a result of decisions

reached in administrative proceedings, judicial determinations, or other findings of noncompliance. (34 CFR 300.220)

B. All disbursement is subject to the availability of funds. In the event of insufficient state funds, disbursement may be prorated pursuant to provisions of the Virginia Appropriation Act.

8VAC20-81-250. State funds for local school divisions.

A. State funds to assist local school divisions with the cost of providing special education and related services for children with disabilities shall be provided through the Virginia Department of Education's appropriation as provided in this section.

B. Children with disabilities enrolled in programs operated by a local school board:

1. Public school programs. In addition to the funds received for each pupil from state basic aid, local school divisions shall receive payment to support the state share of the number of special education teachers and paraprofessionals required by the Standards of Quality. (Chapter 13.2 (§22.1-253.13:1 et seq.) of Title 22.1 of the Code of Virginia)

2. Homebound instruction. Subject to availability, local school divisions shall receive funds to assist with the cost of educating students who are temporarily confined for medical or psychological reasons. Such students may continue to be counted in the average daily membership (ADM) while receiving homebound instruction. In addition, costs will be reimbursed based on the composite index, the hourly rate paid to homebound teachers by the local educational agency, and the number of instructional hours delivered. Reimbursement is made in the year following delivery of instruction. (Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131))

C. Children with disabilities enrolled in regional special education programs: (§§22.1-211 and 22.1-218 of the Code of Virginia)

1. Subject to availability, reimbursement may be made available for a portion of the costs associated with placement of children with disabilities in public regional special education programs pursuant to policies and procedures established by the Virginia Board of Education.

2. Such reimbursement shall be in lieu of the state per pupil basic aid otherwise available for each child.

D. Applicability of least restrictive environment and FAPE provision in state-funded placements. No state-funding mechanism shall result in placements that deny children with disabilities their right to be educated with children without disabilities to the maximum extent appropriate, or otherwise

result in a failure to provide a child with a disability a free appropriate public education. (34 CFR 300.114(b))

E. Children with disabilities receiving special education and related services in regional or local jails. Local school divisions are reimbursed for the instructional costs of providing required special education and related services to children with disabilities in regional or local jails. (Virginia Appropriation Act)

F. Funds under the Comprehensive Services Act for At-Risk Youth and Families. (§§2.2-5211 through 2.2-5212 of the Code of Virginia)

1. Funds are available under the Comprehensive Services Act to support the cost of:

a. Special education and related services for children with disabilities whose IEPs specify private day or private residential placement;

b. Certain nonspecial education services for children with disabilities whose Comprehensive Services Act team identifies that such services are necessary to maintain the child in a less restrictive special education setting, in accordance with Comprehensive Services Act requirements; and

c. Special education and related services for children with disabilities who are placed by a Comprehensive Services Act team in a private residential placement for noneducational reasons.

2. Local school divisions shall be responsible for payment of transportation expenses associated with implementing the child's IEP.

3. Comprehensive Services Act reimbursement requirements shall be applicable.

4. When a parent unilaterally places a child with a disability in an approved private nonsectarian school for children with disabilities, the local school division shall not be responsible for the cost of the placement. If a special education hearing officer or court determines that such placement, rather than the IEP proposed by the local school division, is appropriate and no appeal is perfected from that decision, the local school division is responsible for placement and funds are available under the Comprehensive Services Act to support the costs.

G. Reimbursement shall be made for the education of children with disabilities who: (§22.1-101.1 B and C of the Code of Virginia)

1. Have been placed in foster care or other custodial care within the geographical boundaries of the school division by a Virginia agency;

2. Have been placed in an orphanage or children's home, which exercises legal rights; or

3. Is a resident of Virginia, and has been placed, not solely for school purposes, in a child-caring institution or group home licensed in accordance with the Code of Virginia.

8VAC20-81-260. Federal funds.

A. In accordance with the provisions of the Act, the Virginia Department of Education disburses the federal funds that are available under Part B of the Act to assist local educational agencies with the excess cost of providing special education and related services to eligible children with disabilities. The local educational agency shall submit an annual plan to the Virginia Department of Education describing the use of such funds in accordance with subsection B of 8VAC20-81-230. (34 CFR 300.200; 34 CFR 76.301)

B. Excess costs means those costs that are in excess of the average annual per student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student as may be appropriate, and that shall be computed after deducting:

1. Amounts received under Part B of the Act;

2. Amounts received under Part A of Title I of the ESEA;

3. Amounts received under Parts A and B of Title III of the ESEA; or

4. Any state or local funds expended for programs that would qualify for assistance under any of the parts described in subdivision 1, 2, or 3 of this subsection but excluding any amounts for capital outlay and debt service.

A local educational agency meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities in state and local funds before funds under Part B of the Act are used. (See 34 CFR Part 300, Appendix A for an example of how excess costs shall be calculated.) (34 CFR 300.16, 34 CFR 300.202 and Appendix A)

C. A local educational agency complies with the maintenance of effort requirement in establishing its eligibility for an award in a fiscal year if the local educational agency budgets the same total or per capita amount in state and local funds as it spent from the same sources to educate children with disabilities in the most recent prior year for which information is available. (34 CFR 300.203)

D. Part B funds may be used to supplement, but shall not be used to supplant state and local expenditures for special education and related services, and shall not be used to reduce the level of expenditures for the education of children with disabilities made by the local school division from the local funds below the level of those expenditures for the preceding year, except under certain conditions specified under the Act. (34 CFR 300.202, 34 CFR 300.203 and 34 CFR 300.204)

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E. The amount of Part B funds determined to be available for each local educational agency is based upon the formulas specified under the Act. (34 CFR 300.705 and 34 CFR 300.816)

F. A local educational agency may use Part B funds to implement a schoolwide program under §1114 of the ESEA, except that the amount of Part B funds used in any fiscal year shall not exceed the amount of total Part B funds received that year, divided by the number of children with disabilities in the jurisdiction, and multiplied by the number of children with disabilities participating in the schoolwide program. Part B funds used for this purpose are not subject to other Part B funding requirements, but the local educational agency shall ensure that all children with disabilities in schoolwide program schools: (34 CFR 300.206)

1. Receive services in accordance with a properly developed IEP; and
2. Are afforded all of the rights and services guaranteed to children with disabilities under the Act.

G. Children without disabilities may benefit from the expenditure of Part B funds when special education and related services and supplementary aids and services are provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child. (34 CFR 300.208)

H. Early intervening services. (34 CFR 300.226 and 34 CFR 300.646)

1. Children who are not currently identified as needing special education or related services may need additional academic and behavioral supports to succeed in a general education environment. These supports may be in the form of early intervening services.

Early intervening services apply to children in kindergarten through grade 12, with a particular emphasis on students in kindergarten through grade three.

2. To develop and implement coordinated, early intervening services, which may include interagency financing structures, a local school division may not use more than 15% of the amount the school division receives under Part B of the Act for any fiscal year. The 15% is less any amount reduced by the local school division pursuant to 34 CFR 300.205, if any, in combination with other amounts (which may include amounts other than education funds).
3. In implementing coordinated, early intervening services under this section, a local educational agency may carry out activities that include:
 - a. Professional development (which may be provided by entities other than local educational agencies) for teachers and other school staff to enable such personnel

to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

- b. Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

4. Nothing in this section shall be construed to either limit or create a right to a free appropriate public education under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.

5. Each LEA that develops and maintains coordinated, early intervening services under this section shall annually report to the Virginia Department of Education on:

- a. The number of children served under this section who received early intervening services; and
- b. The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two-year period.

6. Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

7. The amount of funds expended by a local educational agency for early intervening services shall count toward the maximum amount of expenditures that the LEA may reduce when determining compliance with the requirement for maintenance of effort.

8. If the Virginia Department of Education determines significant disproportionality based on race and ethnicity is occurring in a local educational agency in the identification of children with disabilities, or the placement of identified children in a particular educational setting, the local educational agency shall:

- a. Use 15% of its Part B funds to provide comprehensive coordinated early intervening services particularly, but not exclusively, to those groups that were significantly overidentified; and
- b. Publicly report on the revision of policies, practices, and procedures used in the identification and placement of children with disabilities.

I. If the Virginia Department of Education determines that a local school division is adequately providing a free appropriate public education to all children with disabilities residing in the area served by that school division with state and local funds, the department may reallocate any portion of the funds under Part B of the Act that are not needed by the

school division to provide a free appropriate public education to other school divisions in the state that are not adequately providing special education and related services to all children with disabilities residing in the areas they serve. (34 CFR 300.705 and 34 CFR 300.817)

8VAC20-81-270. Funds to assist with the education of children with disabilities residing in state-operated programs.

A. State mental health facilities. State funds for education for children in state mental health facilities are appropriated to the Virginia Department of Education. Local funds for such education shall be an amount equal to the required local per pupil expenditure for the period during which a local school division has a child in residence at a state mental health facility. Such amount shall be transferred by the Virginia Department of Education from the local school division's basic aid funds to the mental health facilities. Federal funds are available under the provisions of the Act. (Virginia Appropriation Act; 34 CFR 300.705)

B. State training centers for the mentally retarded. State funds for special education and related services for children with disabilities in state training centers for the mentally retarded are appropriated to the Department of Mental Health, Mental Retardation and Substance Abuse Services. Local funds for such education shall be an amount equal to the required local per pupil expenditure for the period during which a local school division has a child in residence at a state mental retardation facility. Such amount shall be transferred by the Virginia Department of Education from the local school division's basic aid funds to the centers. Federal funds are available under the provisions of the Act. (Virginia Appropriation Act; 34 CFR 300.705)

C. State specialized children's hospitals. State funds for special education and related services are appropriated to the Virginia Department of Education. Federal funds are available under the provisions of the Act. (Virginia Appropriation Act; 34 CFR 300.705)

D. Woodrow Wilson Rehabilitation Center. State funds for education for children are appropriated to the Virginia Department of Education. Federal funds are available under the provisions of the Act. (Virginia Appropriation Act; 34 CFR 300.705)

E. Regional and local juvenile detention homes. State funds for education services are appropriated to the Virginia Department of Education. (Virginia Appropriation Act; 34 CFR 300.705)

F. State-operated diagnostic clinics. State funds for the employment of educational consultants assigned to child development and other specialty clinics operated by the state Department of Health are appropriated to the Virginia

Department of Education. (Virginia Appropriation Act; 34 CFR 300.705)

G. Virginia Department of Correctional Education. State funds for the education of children, including children with disabilities, are appropriated to the Virginia Department of Correctional Education for the education of all children residing in state adult or juvenile correctional facilities and juveniles committed to the Department of Juvenile Justice and placed in a private facility under contract with the Department of Juvenile Justice. Federal funds are available under the provisions of the Act. (Virginia Appropriation Act; 34 CFR 300.705)

H. The Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton. State funds are appropriated directly to these schools to operate day and residential special education programs for children placed by local school divisions. Local funds for the education of children at the Virginia schools shall be the amount equal to the local per pupil expenditure for the period in which the child is a resident of the school. Such amount shall be transferred by the Virginia Department of Education from the local school division's basic aid funds to the Virginia schools. (Virginia Appropriation Act; 34 CFR 300.705)

I. Regional and local jails. State funds for education services are appropriated to the Virginia Department of Education. (Virginia Appropriation Act; 34 CFR 300.705)

8VAC20-81-280. Funding, withholding, and recovery of funds.

A. The Virginia Department of Education shall disburse funds to local educational agencies for the education of children with disabilities, aged two to 21, inclusive, when they provide documentation of compliance with state and federal laws and regulations. (34 CFR 300.200)

B. If documentation of compliance is not submitted or is inadequate, the Superintendent of Public Instruction shall provide reasonable notice to the local educational agency that state and federal funds will not be available for reimbursement for special education programs and services. (34 CFR 300.155 and 34 CFR 300.221)

1. The notification shall include the substance of the alleged violation, and the local educational agency shall be given an opportunity to submit a written response; and

2. The local educational agency shall have the right to appeal to the Virginia Board of Education under 8VAC20-81-290.

C. Whenever the Virginia Board of Education, in its discretion, determines that a local educational agency fails to establish and maintain programs of free and appropriate public education that comply with the regulations established

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by the board, the board may withhold all state and federal funds for the education of eligible children with disabilities and may use the payments that would have been available to such local educational agency to provide special education, directly or by contract, to eligible children with disabilities in such manner as the board considers appropriate. (§22.1-214 E of the Code of Virginia)

D. If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing under 8VAC20-81-290, finds that a local educational agency has failed to comply with the state and federal laws and regulations and determines that compliance cannot be secured by voluntary means, the Superintendent shall issue a decision in writing stating that state and federal funds for the education of eligible children with disabilities shall not be made available to that local educational agency until it complies with the state and federal laws and regulations. (34 CFR 300.155 and 34 CFR 300.222)

E. If there is evidence that a child has been erroneously classified and thereby counted as eligible for state and federal special education funds and such evidence is challenged by the local educational agency, the foregoing due process procedures shall apply. (34 CFR 300.155, 34 CFR 300.221 and 34 CFR 300.222)

F. If it is determined that such funds have been erroneously claimed, the Virginia Department of Education shall bill the local educational agency for the amount of funds improperly received and withhold an equal amount of state or federal funds for the following year if not repaid by the local educational agency. (34 CFR 300.155, 34 CFR 300.221 and 34 CFR 300.222)

G. Any local educational agency in receipt of a notice, as described in subsection C of this section, shall provide public notice to the local educational agency's jurisdiction regarding pendency of the action. (34 CFR 300.222)

8VAC20-81-290. Appeal of administrative decision regarding funding.

A. The Virginia Department of Education's recommendation to disapprove local eligibility for funding under the Act, or withhold state and federal funds for special education and related services, may be appealed by a local educational agency. (34 CFR 76.401 and 34 CFR 300.155)

B. The procedures for the appeal of administrative decisions are as follows: (34 CFR 76.401 and 34 CFR 300.155)

1. The local educational agency shall request, in writing, a hearing by the Virginia Department of Education within 30 business days from the receipt of notification from the Superintendent of Public Instruction;

2. Within 10 business days from the date of request for a hearing, the Superintendent of Public Instruction shall

notify the local educational agency in writing of the date, time, and location of the hearing;

3. The hearing shall be conducted within 15 business days from the date of notification;

4. The hearing shall be conducted by an independent hearing officer in conformance with the provisions of §§2.2-4020 and 2.2-4024 of the Code of Virginia;

5. Witnesses and attorneys may be present and testify for the Virginia Department of Education or the local educational agency;

6. A written or electronic verbatim record shall be kept of all proceedings of the hearing;

7. The hearing officer shall review all pertinent evidence presented and shall render a decision based on the preponderance of evidence presented at the hearing and on applicable state and federal law;

8. No later than 10 business days after the hearing, the hearing officer shall issue a written ruling, including findings of fact and reasons for the findings;

9. The decision made by the hearing officer shall be final unless an appeal is requested by a local educational agency;

10. If the Virginia Department of Education does not rescind its final action after a review under this subsection, the applicant may appeal to the U.S. Secretary of Education under the provisions of the Education Department General Administrative Regulations; and

11. Notice of appeal shall be filed within 20 days after the local educational agency has been notified by the Virginia Department of Education of the results of the hearing.

8VAC20-81-300. Use of public and private insurance.

A. Children with disabilities who are covered by public benefits or insurance. (34 CFR 300.154(d))

1. A local educational agency may use Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this chapter and as permitted under the public benefits or insurance program except as provided in subdivision 2 of this subsection.

2. With regard to services required to provide a free appropriate public education to an eligible child with a disability, a local educational agency:

a. Shall provide notice to the parent(s) that the local educational agency:

(1) May not require the parent(s) to sign up for or enroll in public insurance programs in order for their child to receive a free appropriate public education;

(2) May not require the parent(s) to incur any out-of-pocket expense, such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this section, but in accordance with subsection C of this section may pay the cost that the parent(s) otherwise would be required to pay; and

(3) May not use a child's benefits under a public benefits or insurance program if that use would:

(a) Decrease available lifetime coverage or any other insured benefit;

(b) Result in the family's paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;

(c) Increase premiums or lead to the discontinuation of benefits insurance; or

(d) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

b. Shall obtain informed parental consent each time that access to public benefits or insurance is sought, including parental consent to release educational information to the public benefits of insurance program for billing purposes in accordance with the provisions of the Management of the Student's Scholastic Record in the Public Schools of Virginia (8VAC20-150); and

c. Shall provide notice to the parent(s) that refusal to allow access to their public benefits or insurance does not relieve the local educational agency of its responsibility to ensure that all required services are provided at no cost to the parent(s).

B. Children with disabilities who are covered by private insurance. (34 CFR 300.154(e))

1. With regard to services required to provide a free appropriate public education to an eligible child under this chapter, a local educational agency may access a parent's private insurance proceeds only if the parent provides informed consent.

2. Each time the local educational agency proposes to access a parent's private insurance proceeds, it shall:

a. Obtain informed parental consent, including parental consent to release educational information to the private insurance program for billing purposes in accordance with the provisions of the Management of the Student's Scholastic Record in the Public Schools of Virginia (8VAC20-150); and

b. Inform the parent(s) that the refusal to permit the local educational agency to access their private insurance does not relieve the local educational agency of its

responsibility to ensure that all required services are provided at no cost to the parent(s).

C. Use of Part B funds. (34 CFR 300.154(f))

1. If a local educational agency is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parent(s) would incur a cost for a specified service required under this chapter to ensure a free appropriate public education, the local educational agency may use its Part B funds under the Act to pay for the service.

2. To avoid financial cost to a parent who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the local educational agency may use its Part B funds to pay the costs the parent otherwise would have to pay to use the parent's insurance (e.g., deductible or co-pay amounts).

D. Proceeds from public or private insurance. (34 CFR 80.25 and 34 CFR 300.154(g))

1. Proceeds from public benefits or insurance or private insurance is not treated as program income for purposes of the Education Department General Administrative Regulations.

2. If a local educational agency spends reimbursements from federal funds (e.g., Medicaid) for services under this chapter, those funds are not considered state or local funds for purposes of the maintenance of effort provisions.

E. Nothing in this chapter should be construed to alter the requirements imposed on a state Medicaid agency or any other agency administering a public benefits or insurance program by federal law, regulations, or policy under title XIX or title XXI of the Social Security Act, or any other public benefits or insurance program. (34 CFR 300.154(h))

8VAC20-81-310. Attorneys' fees.

A. In any action or proceeding brought under §1415 of the Act, the court in its discretion may award reasonable attorneys' fees as part of the costs: (34 CFR 300.517(a))

1. To the prevailing party who is the parent(s) of a child with a disability;

2. To a prevailing party who is a local educational agency or the Virginia Department of Education against the attorney of a parent who files a request for due process or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

3. To a prevailing party who is a local educational agency or the Virginia Department of Education against the attorney of a parent, or against the parent, if the parent's request for a due process hearing, or subsequent cause of

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action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

B. Funds under Part B may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under §1415 and Subpart E of the Act. This section does not preclude a local educational agency from using funds under the Act for conducting an action or proceeding under §1415 of the Act. (34 CFR 300.517(b))

C. A court awards reasonable attorneys' fees under §1415 of the Act consistent with the following: (34 CFR 300.517(c))

1. Determination of amount of attorneys' fees. Fees awarded under §1415 of the Act shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

2. Prohibition of attorneys' fees and related costs for certain services.

a. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under §1415 of the Act for services performed subsequent to the time of a written offer of settlement to a parent(s) if:

(1) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 calendar days before the proceeding begins;

(2) The offer is not accepted within 10 calendar days; and

(3) The court or administrative special education hearing officer finds that the relief finally obtained by the parent(s) is not more favorable to the parent(s) than the offer of settlement.

b. Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or for a mediation session.

c. A resolution session convened in accordance with 8VAC20-81-210 will not be considered:

(1) A meeting convened as a result of an administrative hearing or judicial action; or

(2) An administrative hearing or judicial action for purposes of this subsection.

3. Exception to prohibition on attorneys' fees and related costs. Notwithstanding subdivision 2 of this subsection, an award of attorneys' fees and related costs may be made to a parent(s) who is the prevailing party and who was substantially justified in rejecting the settlement offer.

4. Reduction of amount of attorneys' fees. Except as provided in subdivision 5 of this subsection, the court reduces, accordingly, the amount of the attorneys' fees awarded under this chapter if the court finds that:

a. The parent(s), or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

b. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

c. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

d. The attorney representing the parent(s) did not provide to the local educational agency the appropriate information in the request for a due process hearing in accordance with this chapter.

5. Exception to reduction in amount of attorneys' fees. The provisions of subdivision 4 of this subsection do not apply in any action or proceeding if the court finds that the Virginia Department of Education or the local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of §1415 of the Act.

Part V

Additional Responsibilities of State Boards, Agencies, and Institutions for Education and Training of Children with Disabilities in Residence or Custody

8VAC20-81-320. Additional responsibilities of state boards, agencies, and institutions for education and training of children with disabilities in residence or custody.

A. Provision of education to children with disabilities in residence or custody.

1. Each state board, agency, and institution having children with disabilities in residence or custody shall provide education pursuant to standards, policies and procedures established by the Virginia Board of Education that is comparable to that provided to children with disabilities in the public school system.

a. The Department of Correctional Education shall establish and maintain schools for persons committed to the state, regional or local correctional facilities operated by the Department of Corrections and the Department of Juvenile Justice and for persons committed to the Department of Juvenile Justice and placed in a private facility under contract with the Department of Juvenile Justice. (§§22.1-7 and 22.1-340 of the Code of Virginia)

b. The Superintendent of Public Instruction shall approve the education programs at the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton. (§§22.1-7, 22.1-347, and 22.1-348 of the Code of Virginia)

c. The Department of Mental Health, Mental Retardation and Substance Abuse Services has responsibility for providing the education and training to children with mental retardation in residence in its institutions. The Virginia Board of Education shall supervise the education and training provided to school-age residents in state mental retardation facilities. (§22.1-7 of the Code of Virginia)

d. The Virginia Board of Education shall provide for and direct the education of school-age residents in state mental health facilities in cooperation with the Department of Mental Health, Mental Retardation and Substance Abuse Services. (§§22.1-7 and 22.1-209.2 of the Code of Virginia)

e. The Virginia Board of Education shall prepare and supervise the education and training provided to children in regional and local detention homes. (§§22.1-7 and 22.1-209.2 of the Code of Virginia)

f. The Virginia Board of Education shall supervise the evaluation, education, and training provided to school-age children by the Virginia Department of Health and to school-age children in the teaching hospitals associated with the Eastern Virginia Medical Center, the Virginia Commonwealth University Health System Authority, and The University of Virginia Hospitals. (§§22.1-7 and 22.1-209.2 of the Code of Virginia)

2. The procedures outlined in 8VAC20-81-230 are applicable to each state board, agency, and institution having children with disabilities in residence and custody. (§22.1-7 of the Code of Virginia)

B. Annual program plan. Each state board, agency, and institution having responsibility for providing such education and training shall submit annually to the Virginia Department of Education for approval by the Virginia Board of Education its program plan for the education and training for children with disabilities in residence or custody. This program plan, to be submitted by the date and in the manner specified by the Virginia Board of Education, shall include the provisions and assurances as specified in 8VAC20-81-230.

1. In addition, the program plan shall include the following:

a. The educational objectives of the state board, agency, or institution;

b. Strategies for achieving the educational objectives, including an organized program for staff development;

c. A system of communication between educational and other personnel, including treatment and residential care staff, to ensure coordination of program objectives;

d. A system of communication to ensure service continuity in the transition of the student into and out of the educational program of the facility and, where applicable, the requirements for reenrollment of juveniles committed to the Department of Juvenile Justice, as provided for in the Code of Virginia; (§§16.1-293 and 22.1-289 E of the Code of Virginia)

e. An assessment plan for determining the extent to which the objectives have been achieved including, where practicable, follow-up studies of former students to assist in annual program evaluation;

f. A system of communication between the state board, agency, or institution and its employees, whereby the views of all educational employees may be received in an orderly and constructive manner;

g. A cooperatively developed procedure for the evaluation of educational personnel; and

h. The grievance procedures regarding educational personnel as prescribed by the state or the appropriate local agency or board.

2. At least 5-1/2 hours of education/training per school day or 27-1/2 hours per school week available for each student to implement the student's IEP.

a. If a student has a medical or physical condition that requires modification of the school schedule, a waiver statement shall be placed on file.

b. This waiver statement shall document the physical or mental condition of the individual student that requires significant modification of this schedule, and personnel from the following facilities shall file statements of concurrence:

(1) The attending physician -- the Department of Mental Health, Mental Retardation and Substance Abuse Services facilities;

(2) The central review committee, institute review committee or Department of Juvenile Justice physician or psychologist for medical or psychological conditions, with a waiver statement signed by the Department of Juvenile Justice security staff or designee for safety or security conditions -- the Department of Correctional Education;

(3) The physician, staffing committee or principal -- the Virginia School for the Deaf and the Blind at Staunton

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and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton;

(4) The center counselor upon recommendation of the staffing committee -- Woodrow Wilson Rehabilitation Center;

(5) The attending physician -- state medical facilities;

(6) The detention superintendent or designee -- juvenile detention homes.

3. The Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton shall provide for each age group of children a planned dormitory and a student-life program, including social and daily living skills, recreation, and cultural activities.

C. Staff and facility.

1. Each state board, agency or institution shall assign personnel to the educational program who are appropriately and adequately prepared and trained, including having the knowledge and skills to service children with disabilities, and as follows: (34 CFR 300.156)

a. Administrative, supervisory, instructional, support and ancillary personnel holding valid professional licenses, certificates and endorsements as appropriate in the area of assignment (national standards may apply in the absence of state licensure or certification requirements).

b. Additional education personnel to provide required related services as delineated in the child's IEP.

c. Paraprofessionals who are trained and supervised in accordance with the requirements of the Board of Education.

2. Each state board, agency or institution shall staff the educational program as follows:

a. A principal, supervisor, education director, or lead teacher for the educational program provided at each school or institution, except for juvenile detention homes;

b. Instructional personnel sufficient to maintain pupil-teacher ratios not to exceed the following:

(1) Emotional disturbance - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;

(2) Hearing impairment/deaf - one teacher for every seven children with one paraprofessional for every three classroom teachers; at the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;

(3) Mental retardation - one teacher and one paraprofessional for every 10 children;

(4) Severe disability - one teacher and one paraprofessional for every six children or one teacher and two paraprofessionals for every 10 children;

(5) Visual impairment - one teacher for every seven children and one paraprofessional for every three classroom teachers;

(6) Other health impairment - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;

(7) Orthopedic impairment - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;

(8) Specific learning disability - one teacher for every eight children or one teacher and one paraprofessional for every 10 children;

(9) Multiple disabilities or deaf-blindness - one teacher and one paraprofessional for every six children or one teacher and two paraprofessionals for every 10 children;

(10) Autism - one teacher for every six children or one teacher and one paraprofessional for every eight children;

(11) Traumatic brain injury - students may be placed in any program, according to the student's IEP;

(12) Department of Correctional Education - no greater than an average of one teacher and one paraprofessional for every 10 children;

(13) Woodrow Wilson Rehabilitation Center - no greater than an average of one teacher for every 10 children; and

(14) Juvenile detention homes - one teacher for every 12 beds, based on the bed capacity of the facility. If the number of students exceeds the bed capacity, then the ratio shall be one teacher for every 12 students based on the average daily attendance from the previous school year. If unusual or extenuating circumstances exist, the agency may apply to the Superintendent of Public Instruction for an exception to the ratio requirements. Such requests shall be supported by sufficient justification.

3. Each facility shall have available adequate and appropriate classroom space, a library, and instructional materials and supplies to meet the educational needs of the children.

Part VI

Compliance with §504 of the Rehabilitation Act of 1973, as Amended

8VAC20-81-330. Compliance with §504 of the Rehabilitation Act of 1973, as amended.

A. Each state-operated program providing educational services to persons of school age, the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton shall provide a free appropriate public education to each qualified person with a disability of school age and provide procedural safeguards in accordance with the Virginia Department of Education's 504 plan. (34 CFR 104.33)

B. Local educational agencies are required to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable

8VAC20-81-340. Special education caseload staffing requirements.

resolution of complaints. In meeting the due process portion of this requirement, local educational agencies may utilize the due process hearing system specified in 8VAC20-81-210 to resolve disputes regarding the identification, evaluation, or educational placement of qualified persons who have a disability. If this procedure is selected, the local school system is responsible for 100 percent of the reimbursement costs to the special education hearing officer and any other costs incurred and requested by the special education hearing officer or school division. The Virginia Department of Education trains special education hearing officers on 504 requirements. (34 CFR 104.7 and 34 CFR 104.36)

Figure 1: Local school division caseload maximums as funded by the Virginia Appropriation Act.

Disability Category	Level II		Level I
	With Paraprofessional 100% of the time	Without Paraprofessional 100% of the Time	
Autism	8	6	24
Deaf-blindness	8	6	
Developmental Delay: age 5-8	10	8	
Developmental Delay: age 2-5	8 Center-based 10 Combined	12 Home-based and/or Itinerant	
Emotional Disturbance	10	8	24
Hearing Impairment/Deaf	10	10	24
Learning Disability	10	10	24
Mental Retardation	10	10	24
Multiple Disabilities	8	6	
Orthopedic Impairment	10	10	24
Other Health Impaired	10	10	24
Severe Disabilities	8	6	
Speech or Language Impairment			68 (Itinerant)
Traumatic Brain Injury	May be placed in any program, according to the IEP.		

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<u>Combined group of students needing Level I services with students needing Level II services</u>	<u>20 Points (see Figure 2)</u>
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Figure 2: Values for students receiving Level I services when combined with students receiving Level II services.

<u>Disability Category</u>	<u>Level II Values</u>		<u>Level I</u>
	<u>With Paraprofessional 100% of the time</u>	<u>Without Paraprofessional 100% of the time</u>	<u>Values</u>
<u>Autism</u>	<u>2.5</u>	<u>3.3</u>	<u>1</u>
<u>Deaf-blindness</u>	<u>2.5</u>	<u>3.3</u>	<u>1</u>
<u>Developmental Delay: age 5 - 8</u>	<u>2.0</u>	<u>2.5</u>	<u>1</u>
<u>Emotional Disturbance</u>	<u>2.0</u>	<u>2.5</u>	<u>1</u>
<u>Hearing Impairment/Deaf</u>	<u>2.0</u>	<u>2.5</u>	<u>1</u>
<u>Learning Disability</u>	<u>2.0</u>	<u>2.5</u>	<u>1</u>
<u>Mental Retardation</u>	<u>2.0</u>	<u>2.5</u>	<u>1</u>
<u>Multiple Disabilities</u>	<u>2.5</u>	<u>3.3</u>	<u>1</u>
<u>Orthopedic Impairment</u>	<u>2.0</u>	<u>2.5</u>	<u>1</u>
<u>Other Health Impairment</u>	<u>2.0</u>	<u>2.5</u>	<u>1</u>
<u>Severe Disabilities</u>	<u>2.0</u>	<u>2.5</u>	<u>1</u>
<u>Traumatic Brain Injury</u>	<u>2.0</u>	<u>2.5</u>	<u>1</u>

VA.R. Doc. No. R07-95; Filed April 9, 2008, 10:51 a.m.

TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with §2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 10VAC5-20. **Banking and Savings Institutions (amending 10VAC5-20-30).**

Statutory Authority: §§6.1-94, 6.1-194.85, 6.1-194.149 and 12.1-13 of the Code of Virginia.

Public Hearings: A public hearing will be scheduled upon request.

Public Comment: Public comments may be submitted until 5 p.m. on May 9, 2008.

Agency Contact: Gerald Fallen, Assistant Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9699, FAX (804) 371-9416, or email gerald.fallen@scc.virginia.gov.

Summary:

The proposed regulation amends the schedule of annual fees to be paid by state-chartered banks and savings institutions to defray the costs of their supervision, regulation and examination.

AT RICHMOND, APRIL 4, 2008
 COMMONWEALTH OF VIRGINIA, ex rel.
 STATE CORPORATION COMMISSION

CASE NO. BFI-2008-00066

Ex Parte: In re: annual fees paid by
 banks and savings institutions

ORDER TO TAKE NOTICE

WHEREAS, 10 VAC 5-20-30 of the Virginia Administrative Code sets forth a schedule for the assessment of annual fees to be paid by state-chartered banks and savings institutions to defray the costs of their supervision, regulation, and examination;

WHEREAS, due to changing market conditions and the conversion of Virginia's two largest state-chartered banks to federal institutions, additional revenue is needed in order to adequately supervise, regulate, and examine Virginia's existing state-chartered banks and savings institutions; and

WHEREAS, the Bureau of Financial Institutions has proposed amending 10 VAC 5-20-30 in order to generate additional revenue;

IT IS THEREFORE ORDERED THAT:

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

(2) Comments or requests for hearing on the proposed regulation must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control

Center, P.O. Box 2118, Richmond, Virginia 23218, on or before May 9, 2008. Requests for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. BFI-2008-00066.

Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(3) The proposed regulation shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.

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

AN ATTESTED COPY hereof shall be sent to the Commissioner of Financial Institutions, who shall forthwith mail a copy of this Order, together with a copy of the proposed regulation, to all state-chartered banks, savings institutions, and such other interested parties as he may designate.

10VAC5-20-30. Schedule prescribing annual fees paid for examination, supervision, and regulation of state-chartered banks and savings institutions.

Pursuant to the provisions of §§6.1-94, 6.1-194.85 and 6.1-194.149 of the Code of Virginia, the State Corporation Commission hereby sets the following schedule of annual fees to be paid by state-chartered banks, savings institutions, and savings banks for their examination, supervision, and regulation:

SCHEDULE					
Asset Interval		Fee			
Assets Exceeding	But Not Exceeding	This Amount	Plus		Assets Exceeding
\$0	\$5 million	\$6,000 -\$6,900	0	x	
5 million	25 million	6,000 -6,900	.000350 .0004025	x	\$5 million
25 million	100 million	13,000 -14,950	.000200 .00023	x	25 million
100 million	200 million	28,000 -32,200	.000150 .0001725	x	100 million
200 million	1000 million 1 billion	43,000 -49,450	.000110 .0001265	x	200 million
1000 million 1 billion	5000 million 5 billion	131,000 -150,650	.000090 .0001035	x	1000 million -1 billion
5000 million 5 billion		491,000 -564,650	.000070 .0000805	x	5000 million -5 billion

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The fee assessed using the above schedule shall be rounded down to the nearest whole dollar. The assessment shall be based on the institution's total assets as shown by its Report of Condition as of the close of business for the preceding calendar year ~~filed with the Bureau of Financial Institutions.~~

A bank or savings institution which opens for business January 1 through June 30 shall be assessed a fee of ~~\$6,000~~ \$6,900 for that year.

A bank or savings institution which opens for business on or after July 1 shall be assessed a fee of ~~\$4,500~~ \$5,175 for that year.

VA.R. Doc. No. R08-1252; Filed April 8, 2008, 11:21 a.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Forms

NOTICE: The following revised form has been filed by the State Corporation Commission. The forms are available for public inspection at the State Corporation Commission, Bureau of Insurance, Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, or the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219. Copies of the forms may be obtained from contact person listed below.

Title of Regulation: **14VAC5-215. Rules Governing Independent External Review of Final Adverse Utilization Review Decisions.**

Agency Contact: Kim Naorz, External Appeals, Bureau of Insurance, 1300 E. Main Street, PO Box 1157, Richmond, VA 23218, telephone (804) 371-9915 or email kim.naoroz@scc.virginia.gov.

April 1, 2008

Administrative Letter 2008-05

To: All Insurers Licensed to Write Accident and Sickness Insurance, All Licensed Health Maintenance Organizations, and All Licensed Health Services Plans

Re: Rules Governing Independent External Review of Final Adverse Utilization - Review Decisions (14 VAC 5-215-10 et seq.)

This letter serves to notify carriers of a change to the *Authorization to Release Medical Information* form used in connection with external appeals of final adverse decisions made by utilization review entities. Effective immediately, the form no longer calls for the covered person's social

security number. A copy of the revised form is attached to this Administrative letter for your convenience. In addition, this Administrative Letter and the form may be found on the Bureau's website at www.scc.virginia.gov/division/boi.

All carriers are asked to replace existing stocks of these forms with this revised form as soon as reasonably possible.

Questions relating to this Administrative Letter should be directed to:

Kim R. Naoroz
Manager
External Appeals
Bureau of Insurance Life and Health Division
P.O. Box 1157
Richmond, VA 23218
Phone: 804-371-9915
Kim.Naoroz@scc.virginia.gov

Cordially,



Alfred W. Gross
Commissioner of Insurance

Attachment – Form 215D (rev. 4/08)

NOTICE: The forms used in administering the above regulation are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

Instructions for Completing the Appeal of Final Adverse Decision Form, Form 215A (rev. 7/07).

Important Terms and Definitions, Form 215B (rev. 7/07).

Appeal of Final Adverse Decision Form, Form 215C (rev. 7/07).

Authorization to Release Medical Information, Form 215D (rev. ~~7/07~~ 4/08).

Form 215D
(rev. 4/08)



State Corporation Commission
Bureau of Insurance
External Appeals
P.O. Box 1157
Richmond, VA 23218
(804) 371-9913

AUTHORIZATION TO RELEASE MEDICAL INFORMATION

This authorization must be signed by (i) the covered person; (ii) the covered person's parent, legal guardian, legal custodian, or other individual authorized by law to act on behalf of the covered person, if the covered person is a minor; (iii) the covered person's spouse, parent, committee, legal guardian, or other individual authorized by law to act on behalf of the covered person, if the covered person is not a minor but is incompetent or incapacitated; or (iv) the covered person's treating health care provider acting with the consent of the covered person, the covered person's parent, guardian, legal custodian, or other individual authorized by law to act on behalf of the covered person, if the covered person is a minor, or the covered person's spouse, parent, committee, legal guardian or other individual authorized by law to act on behalf of the covered person, if the covered person is not a minor but is incompetent or incapacitated.

Any health care provider of services or supplies, insurance company, or any other organization, institution or person that has a record or knowledge regarding the covered person named below and such person's health, is hereby authorized to furnish to the Bureau of Insurance, or its designated impartial health entity, information concerning services or supplies provided or proposed to be provided to such covered person.

If I am not the covered person listed below, I hereby certify that I am authorized by law to execute this authorization on the covered person's behalf.

This authorization is given for the purpose of conducting an external review of a final adverse decision made by a utilization review entity. This authorization is valid for 90 days from the date below.

Printed Name of Covered Person: _____

Covered Person's Date of Birth: _____

Signature of Covered Person: _____

Date: _____

OR

Other Authorized Signature: _____

Date: _____

VA.R. Doc. No. R08-1254; Filed April 2, 2008, 12:43 p.m.

Regulations

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

Fast-Track Regulation

Title of Regulation: 18VAC15-20. Virginia Asbestos Licensing Regulations (amending 18VAC15-20-451).

Statutory Authority: §§54.1-201 and 54.1-501 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until June 27, 2008.

Effective Date: August 1, 2008.

Agency Contact: David Dick, Executive Director, Department of Professional and Occupational Regulation, The Perimeter Center, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2648, FAX (804) 527-4297, or email alhi@dpor.virginia.gov.

Basis: The Board for Asbestos, Lead and Home Inspectors is empowered to promulgate regulations under the legal authority found in §54.1-201 of the Code of Virginia, which empowers regulatory boards generally, and §54.1-501 of the Code of Virginia, which requires the Board for Asbestos, Lead, and Home Inspectors specifically to promulgate regulations to administer and enforce the provisions of Chapter 5 (§54.1-500 et seq.) of Title 54.1 of the Code of Virginia.

Purpose: Clarification is the sole purpose for the amendment. No substantive change in the regulation requirement is proposed.

The regulation is essential to protect the health, safety and welfare of citizens by assuring that building owners or their agents are aware that certain asbestos projects require a project monitor. A project monitor will make sure all individuals performing abatements are properly trained and licensed; that proper abatement methods are used; and that a laboratory analysis has found that asbestos hazards have been removed.

The board felt that the current language in 18VAC15-20-451 E 1 was insufficiently clear without a specific reference to the two regulation sections (18VAC15-20-455.1 and 18VAC15-20-456) that specified when a project monitor was necessary. The amendment adds a citation to those two sections of the current regulation.

The board felt that the current language in 18VAC15-20-451 E 2 did not specifically address situations involving a single contract to cover multiple asbestos projects undertaken over a

period of time. "Service" contracts often provide for the contractor's services during a period of time to address any asbestos abatement projects that may arise. The board felt that an amendment clarifying that a single notification and acknowledgement provided at the beginning of a multiple-project service contract term would be sufficient to assure that the building owner or his agent is aware of the project monitor requirement.

Rationale for Using Fast-Track Process: The amendment clarifies an existing requirement. No new requirement results. The amendment to 18VAC15-20-541 E 2 could save asbestos contractors the expense of multiple notifications and acknowledgements for multiple-project contracts by clarifying that a single initial notification and acknowledgement will comply.

Substance: There are no new substantive provisions or changes to the existing sections. The amendments clarify the regulation by adding a citation to the regulation sections that provide for a project monitor on asbestos abatement projects and adding a sentence to make clear that a single notification and acknowledgement is sufficient for a multiple-project service contract.

The amendments (i) amend the asbestos contractor responsibilities section (18VAC15-20-451) to add a citation to the regulation sections that describe asbestos abatement projects requiring a project monitor (18VAC15-20-455.1) and establish project monitor responsibilities (18VAC15-20-456) and (ii) amend the asbestos contractor responsibilities section (18VAC15-20-451) to clarify that the initial notification by the contractor to the building owner or agent of the owner and acknowledgement to the contractor by the building owner or agent of the owner is sufficient to comply with the regulation requirement for contracts that involve multiple asbestos projects to be performed on the building owner's property during the term of the contract.

Issues: The issue addressed by the proposal is one of clarification as to when a project monitor is necessary for an asbestos abatement project and clarification that a single notification to and acknowledgement from the building owner or owner's agent is sufficient for multiple-project service contracts.

Clarification of an existing regulation section is the primary advantage to the agency and the Commonwealth. No disadvantage has been identified.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Asbestos, Lead, and Home Inspectors (Board) proposes to amend its asbestos licensing regulation to add relevant Virginia Administrative Code citations. The Board also proposes to clarify that asbestos contractors need only notify building owners (or agents) of the owners' (or agents')

legal responsibility to hire an asbestos project monitor once at the beginning of a contractual relationship.

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

Estimated Economic Impact. Current regulation requires asbestos contractors to inform building owners or agents, with whom they have contracted for asbestos removal services, that they (the owners/agents) are required by law to hire an asbestos monitor. Asbestos contractors are also currently required to obtain written acknowledgement that they have passed on the required information.

The Board proposes to amend this regulation to specify that contractors need only give the required information, and receive written acknowledgement, once at the beginning of a term of contract even if that contract covers multiple asbestos removal projects for the same owner/agent. Neither the Department of Professional and Occupational Regulation (DPOR) nor any regulated entity is likely to incur any costs on account of this regulatory change. To the extent that there may have been confusion about whether the same owner/agent needed to be informed of his responsibility multiple times, this regulatory change will provide the benefit of clarity.

Businesses and Entities Affected. These regulatory changes will affect all 176 asbestos contractors that are licensed by the Board.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action will likely have no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have no affect 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 costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no affect 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 Virginia Department of Professional and Occupational Regulation Board for Asbestos, Lead and Home Inspectors agrees with the Virginia Department of Planning and Budget's Economic Impact Analysis on 18VAC15-20, Asbestos Licensing Regulations dated February 26, 2008.

Summary:

The amendments clarify the regulation by (i) adding cross references to the regulation sections that provide for a project monitor on asbestos abatement projects and (ii) specifying that a single notification to, and acknowledgment by, the building or property owner or owner's agent is sufficient for a multiple project service contract.

Part VII

Standards of Practice and Conduct for Licensed Asbestos Contractors

18VAC15-20-451. Asbestos contractor responsibilities.

A. Licensed asbestos contractors shall comply with all requirements, procedures, standards and regulations covering any part of an asbestos project established by the U.S. Environmental Protection Agency, the U.S. Occupational Safety and Health Administration, the Virginia Department of Labor and Industry, and the Divisions of Air Pollution and Waste Management of the Department of Environmental Quality (§54.1-517 of the Code of Virginia).

B. Licensed asbestos contractors shall comply with the requirements found in §54.1-1100 of the Code of Virginia governing the regulation of general contractors.

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C. A licensed asbestos contractor shall employ only licensed asbestos supervisors and workers to perform work on any asbestos project.

D. A licensed asbestos contractor shall ensure that a licensed asbestos supervisor is present at each job site while an asbestos project is in progress.

E. Prior to the start of any asbestos project, the licensed asbestos contractor shall:

1. Notify the building or property owner or agent of the owner that a licensed project monitor is required in accordance with the provisions of 18VAC15-20-455.1 and 18VAC15-20-456 to determine that proper work practices are used and compliance with all asbestos laws and regulations is maintained, to collect environmental air samples during the asbestos project, to perform visual inspections of the work area, and to grant final clearance upon completion of the asbestos project.

2. Obtain a written acknowledgment from the owner or agent of the owner that the owner or agent of the owner has been notified of the requirement to secure the services of a licensed asbestos project monitor. Such acknowledgment must include the address of the building where the asbestos project is to take place; the date the work is to be performed; the name, address, and license number of the licensed asbestos contractor performing the work; and evidence that the building or property owner or agent of the owner has received the notification. The initial notification and acknowledgment shall be sufficient for the term of multiple-project service contracts.

3. Conflict of interest situations and relationships between asbestos contractors and asbestos project monitors are set forth in subdivision 2 of 18VAC15-20-453.

VA.R. Doc. No. R08-1140; Filed April 2, 2008, 3:02 p.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

DEPARTMENT OF TRANSPORTATION

Final Regulation

REGISTRAR'S NOTICE: The Commonwealth Transportation Board is claiming an exemption from the Administrative Process Act pursuant to Chapters 274 and 454 of the 2008 Acts of Assembly, which amended Chapters 863 and 928 of the 2007 Acts of Assembly and relate to the initial promulgation of access management regulations relating to principal arterial highways.

Title of Regulation: **24VAC30-72. Access Management Regulations (adding 24VAC30-72-10, 24VAC30-72-20, 24VAC30-72-30, 24VAC30-72-40, 24VAC30-72-50, 24VAC30-72-60, 24VAC30-72-70, 24VAC30-72-80, 24VAC30-72-90, 24VAC30-72-100, 24VAC30-72-110, 24VAC30-72-120, 24VAC30-72-130, 24VAC30-72-140, 24VAC30-72-150, 24VAC30-72-160, 24VAC30-72-170).**

Statutory Authority: §33.1-198.1 of the Code of Virginia.

Effective Date: July 1, 2008.

Agency Contact: Paul Grasewicz, AICP, Access Management Program Administrator, Department of Transportation, Asset Management Division, 6600 West Broad Street, Richmond, VA 23230, telephone 804-662-9721, FAX 804-662-9405, or email paul.grasewicz@vdot.virginia.gov.

Background: Chapters 863 and 928 of the 2007 Acts of Assembly (HB2228 and SB1312, respectively) amended §§33.1-13, 33.1-198 and 33.1-199 of the Code of Virginia, and added §33.1-198.1 to the Code of Virginia. The legislation requires the Commonwealth Transportation Commissioner (commissioner) to develop comprehensive highway access management regulations and standards.

The purpose of the regulations and standards is to enhance the operation and safety of the systems of state highways in order to protect the public health, safety, and general welfare while ensuring that private property is entitled to reasonable access to highways. The goals for access management are:

1. To reduce traffic congestion and impacts to the level of service of highways, leading to reduced fuel consumption and air pollution;
2. To enhance public safety by decreasing traffic crash rates;
3. To support economic development in the Commonwealth by promoting the efficient movement of people and goods;
4. To reduce the need for new highways and road widening by improving the performance of existing state highways; and
5. To preserve public investment in new highways by maximizing their performance.

In response to this directive, regulations (Access Management Regulations (12/07)) were drafted, along with related access management design standards for entrances and intersections. The regulations and design standards were to be used to manage the location, number, and spacing and design of entrances and intersections, including median openings, turn lanes, traffic signals, and interchanges on the systems of state highways.

Although initial promulgation of the regulations was exempt from the Administrative Process Act (APA) (§2.2-4000 et

seq. of the Code of Virginia), the legislation directed the commissioner to solicit and consider public comment in their development. The commissioner was further directed by the legislation to publish the regulations no later than December 31, 2007, to be effective July 1, 2008.

These new regulations and design standards were to replace and supersede the Minimum Standards of Entrances to State Highways (24VAC30-71) and Part IV, Entrance Permits, of the Land Use Permit Manual (24VAC30-150).

The mandate to develop and promulgate access management regulations is new, but the regulation of entrances is not. The Highway Commission, predecessor to the Commonwealth Transportation Board, originally established minimum standards for entrances in 1946. Part IV of the Land Use Permit Manual (24VAC30-150), along with the Minimum Standards of Entrances to State Highways (24VAC30-71), served as the basis for the Access Management Regulations (12/07) and the access management design standards for entrances and intersections.

On December 19, 2007, the Office of the Attorney General certified that VDOT had the legal authority, pursuant to Chapter 863 of the 2007 Acts of Assembly, to promulgate the Access Management Regulations (12/07), that the Access Management Regulations (12/07) complied with the requirements of Chapter 863 of the 2007 Acts of Assembly, and that the fourth enactment clause of Chapter 863 of the 2007 Acts of Assembly waived the requirements of the APA with respect to the promulgation of the Access Management Regulations (12/07). The Access Management Regulations (12/07) were published on the VDOT public website in accordance with the mandated publication date of December 31, 2007.

During the 2008 General Assembly, SB370 and HB1572 were enacted to allow for the Access Management Regulations (12/07) to be promulgated in phases. The first phase (initial promulgation of regulations applicable to principal arterials) is exempt from the APA, and the regulations will go into effect July 1, 2008. Subsequent phases (promulgation of regulations applicable to minor arterials, collectors, and local highways) are subject to the APA and will go into effect October 1, 2009. The legislation provided that the general notice concerning proposed Access Management Regulations published in The Virginia Register on October 15, 2007, shall be considered a valid Notice of Intended Regulatory Action pursuant to the APA for promulgation of this second phase.

To accommodate the mandate of Chapters 454 and 274 of the 2008 Acts of Assembly, VDOT revised 24VAC30-72-30 of the Access Management Regulations (12/07) and the related design standards for entrances and intersections to remove language related to minor arterials, collectors, and local highways. In response to these directives, the Access

Management Regulations: Principal Arterials and the access management spacing standards for entrances, intersections (median openings), and traffic signals in the design standards only apply to highways with a functional classification of principal arterial. The remaining provisions in the design standards are not based on the functional classification of a highway. These design standards are included in the Road Design Manual, which is incorporated by reference in the final Access Management Regulations: Principal Arterials. The design standards are available at <http://www.vdot.virginia.gov/accessmgt/>.

In accordance with Chapters 454 (HB 1572) and 274 (SB 370) of the 2008 Acts of Assembly, VDOT will also publish proposed Access Management Regulations and related access management spacing standards for entrances, intersections (median openings), and traffic signals in the design standards, to be applicable to highways with a functional classification of minor arterial, collector, and local. These proposed regulations will be processed in accordance with the APA and are mandated to go into effect October 1, 2009.

In addition, VDOT made the following changes to the Access Management Regulations (12/07) in developing the Access Management Regulations: Principal Arterials to improve clarity and consistency and to more accurately describe procedures:

24VAC30-72-10. Removed "or his designee" from the definition of "district administrator" and added a separate definition for "district administrator's designee." (Language throughout the chapter was amended accordingly to distinguish between the duties and authorities of the district administrator and the district administrator's designee.)

24VAC30-72-10. Added a definition for "principal arterial."

24VAC30-72-10. Changed the term "urban" to "urban area" and removed the reference to "urban" being an abbreviation for "urban area."

24VAC30-72-50. Amendment to provide that appeal of denial or revocation or conditions imposed by a permit is to be made to the district administrator with a further appeal to the commissioner rather than to the commissioner directly.

24VAC30-72-60. Clarified provisions related to VDOT's allowing reasonably convenient access to a parcel.

24VAC30-72-70. Provided that mitigation provisions must be taken if an entrance will cause "a significant increase" in delay on a highway, rather than simply "an increase."

24VAC30-72-120. Provided that a permit applicant may provide evidence that a shared entrance is not feasible due to "physical constraints, including but not limited to topography, environmentally sensitive areas, and hazardous uses, to creating a shared entrance," in addition to an inability to reach an agreement with owners of adjacent property.

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Note on Functional Classification: Functional classification means the federal system of classifying groups of highways according to the character of service they are intended to provide and classifications made by the VDOT Commissioner based on the operational characteristics of a highway. Each highway is assigned a functional classification based on the highway's intended purpose of providing priority to through traffic movement or access to property. The functional classification system groups highways into three basic categories identified as (i) arterial, with two subclasses of "principal" and "minor," with the primary function to provide through movement of traffic; (ii) collector, with the function of supplying a combination of through movement and access to property; and (iii) local, with the primary function of providing access to property.

This regulation applies to principal arterials. Principal arterials include the interstate system, urban freeways and expressways, and other principal arterials. These are major highways in which the highest priority is mobility and the movement of traffic, where access to property is carefully controlled. Principal arterials will be of national, statewide, or regional importance with moderate to high volumes of traffic traveling relatively long distances at higher speeds. A map of the Principal Arterials for Access Management is available at <http://www.vdot.virginia.gov/accessmgmt/>.

Summary:

This regulation was mandated by Chapters 863 and 928 of the 2007 Acts of Assembly to allow the Commonwealth and its localities to manage access to the systems of state highways according to their federal functional classification or operational characteristics through the control of and improvements to the location, number, spacing, and design of entrances, median openings, turn lanes, street intersections, traffic signals, and interchanges. Highways are classified as principal arterial, minor arterial, collector, or local. The management of property access to the highways is greatest for principal arterials, which have a priority function to provide safe and efficient movement of through traffic and least for local roads where providing access is the primary function.

Due to amendments to the original legislation enacted by the 2008 General Assembly, the access management regulation will be implemented in phases: the first phase deals only with access management for principal arterials, while the second phase, to be promulgated separately, deals with minor arterial, collector and local VDOT highways. VDOT's existing regulations in the Land Use Permit Manual (24VAC30-150) and Minimum Standards of Entrances to State Highways (24VAC30-71) will remain in effect for those roads not classified as principal arterials until the second phase of the regulation can be promulgated.

Access management standards for the location, number and spacing of entrances, median openings, street intersections, traffic signals, and access points near interchange ramps are incorporated by reference in Appendix F of the Road Design Manual. Such standards also will be implemented in phases, applying only to principal arterials in the first phase and to minor arterials, collectors, and local highways in the second phase. The first phase regulation and standards take effect July 1, 2008, and the second phase on October 1, 2009.

CHAPTER 72

ACCESS MANAGEMENT REGULATIONS

24VAC30-72-10. Definitions.

"Access management" means the systematic control of the location, spacing, design, and operation of entrances, median openings, traffic signals, and interchanges for the purpose of providing vehicular access to land development in a manner that preserves the safety and efficiency of the transportation system.

"Commercial entrance" means any entrance serving land uses other than two or fewer individual private residences. (See "private entrance.")

"Commissioner" means the individual who serves as the chief executive officer of the Department of Transportation or his designee.

"Commonwealth" means the Commonwealth of Virginia.

"Crossover" or "median opening" means an opening in a nontraversable median (such as a concrete barrier or raised island) that provides for crossing and turning traffic.

"Design speed" means the selected speed used to determine the geometric design features of the highway.

"District" means each of the nine areas in which VDOT is divided to oversee the maintenance and construction on the state-maintained highways, bridges and tunnels within the boundaries of the area.

"District administrator" means the VDOT employee assigned to supervise the district.

"District administrator's designee" means the VDOT employee or employees designated by the district administrator.

"Entrance" means any driveway, street, or other means of providing for movement of vehicles to or from the highway.

"Frontage road" means a road that generally runs parallel to a highway between the highway right-of-way and the front building setback line of the abutting properties and provides access to the abutting properties for the purpose of reducing the number of entrances to the highway and separating the abutting property traffic from through traffic on the highway.

"Functional area" means the area of the physical highway feature, such as an intersection, roundabout, railroad grade crossing, or interchange, plus that portion of the highway that comprises the decision and maneuver distance and required vehicle storage length to serve that highway feature.

"Functional area of an intersection" means the physical area of an at-grade intersection plus all required storage lengths for separate turn lanes and for through traffic including any maneuvering distance for separate turn lanes.

"Functional classification" means the federal system of classifying groups of highways according to the character of service they are intended to provide and classifications made by the commissioner based on the operational characteristics of a highway. Each highway is assigned a functional classification based on the highway's intended purpose of providing priority to through traffic movement or adjoining property access. The functional classification system groups highways into three basic categories identified as (i) arterial, with the function to provide through movement of traffic; (ii) collector, with the function of supplying a combination of through movement and access to property; and (iii) local, with the function of providing access to property.

"Highway," "street," or "road" means a public way for purposes of vehicular travel, including the entire area within the right-of-way.

"Intersection" means any at-grade connection with a highway including two highways or an entrance and a highway.

"Legal speed limit" means the speed limit set forth on signs lawfully posted on a highway or in the absence of such signs the speed limit established by Article 8 (§46.2-870 et seq.) of Chapter 8 of Title 46.2 of the Code of Virginia.

"Level of service" means a qualitative measure describing the operational conditions within a vehicular traffic stream, generally in terms of such service measures as speed, travel time, freedom to maneuver, traffic interruptions, and comfort and convenience. "Level-of-service" is defined and procedures are presented for determining the level of service in the Highway Capacity Manual (see 24VAC30-72-170 I).

"Limited access highway" means a highway especially designed for through traffic over which abutting properties have no easement or right of light, air, or access by reason of the fact that their property abuts upon the limited access highway.

"Median" means the portion of a divided highway that separates opposing traffic flows.

"Operating speed" means the speed at which drivers are observed operating their vehicles during free-flow conditions with the 85th percentile of the distribution of observed speeds

being the most frequently used measure of the operating speed of a particular location or geometric feature.

"Permit" or "entrance permit" means a document that sets the conditions under which VDOT allows a connection to a highway.

"Permit applicant" means the person or persons, firm, corporation, government, or other entity that has applied for a permit.

"Permittee" means the person or persons, firm, corporation, government, or other entity that has been issued a permit.

"Preliminary subdivision plat" means a plan of development as set forth in §15.2-2260 of the Code of Virginia.

"Principal arterial" means the functional classification for a major highway intended to serve through traffic where access is carefully controlled, generally highways of regional importance, with moderate to high volumes of traffic traveling relatively long distances and at higher speeds.

"Private entrance" means an entrance that serves up to two private residences and is used for the exclusive benefit of the occupants or an entrance that allows agricultural operations to obtain access to fields or an entrance to civil and communication infrastructure facilities that generate 10 or fewer trips per day such as cell towers, pump stations, and stormwater management basins.

"Professional engineer" means a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects through licensure as a professional engineer.

"Reverse frontage road" means a road that is located to the rear of the properties fronting a highway and provides access to the abutting properties for the purpose of reducing the number of entrances to the highway and removing the abutting property traffic from through traffic on the highway.

"Right-of-way" means that property within the systems of state highways that is open or may be opened for public travel or use or both in the Commonwealth. This definition includes those public rights-of-way in which the Commonwealth has a prescriptive easement for maintenance and public travel.

"Roadside" means the area adjoining the outer edge of the roadway. The median of a divided highway may also be considered a "roadside."

"Roadway" means the portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.

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"Shared entrance" means a single entrance serving two or more adjoining parcels.

"Sight distance" means the distance visible to the driver of a vehicle when the view is unobstructed by traffic.

"Site plan" and "subdivision plat" mean a plan of development approved in accordance with §§15.2-2286 and 15.2-2241 through 15.2-2245 of the Code of Virginia.

"Stopping sight distance" means the distance required by a driver of a vehicle, traveling at a given speed, to bring the vehicle to a stop after an object on the highway becomes visible, including the distance traveled during the driver's perception and reaction times and the vehicle braking distance.

"Systems of state highways" means all highways and roads under the ownership, the control, or the jurisdiction of VDOT, including but not limited to, the primary, secondary and interstate highway.

"Traveled way" means the portion of the roadway for the movement of vehicles, exclusive of shoulders and turn lanes.

"Trip" means a single or one-directional vehicle movement either entering or exiting a property; a vehicle leaving the property is one trip and a vehicle returning to the property is one trip.

"Turn lane" means a separate lane for the purpose of enabling a vehicle that is entering or leaving a highway to increase or decrease its speed to a rate at which it can more safely merge or diverge with through traffic; acceleration and deceleration lanes.

"Urban area" means an urbanized area with a population of 50,000 or more, or an urban place (small urban area) as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area. The Federal Highway Administration defines "urban area" in more detail based on the federal-aid highway law (23 USC §101).

"VDOT" means the Virginia Department of Transportation, its successor, the Commonwealth Transportation Commissioner, or his designees.

24VAC30-72-20. Authority to regulate entrances to highways.

A. VDOT's authority to regulate highway entrances and manage access to highways is provided in §§33.1-13, 33.1-197, 33.1-198, 33.1-198.1, and 33.1-199 of the Code of Virginia, and its authority to make regulations concerning the use of highways generally is provided in §33.1-12 (3) of the Code of Virginia. Each proposed highway entrance creates a potential conflict point that impacts the safe and efficient flow of traffic on the highway; therefore, private property interests in access to the highway must be balanced with public interests of safety and mobility. Managing access to highways

can reduce traffic congestion, help maintain the levels of service, enhance public safety by decreasing traffic conflict points, support economic development by promoting the efficient movement of people and goods, reduce the need for new highways and road widening by improving the performance of existing highways, preserve the public investment in new highways by maximizing their efficient operation, and better coordinate transportation and land use decisions.

B. Where a plan of development with the specific location of an entrance or entrances was proffered pursuant to §15.2-2297, 15.2-2298, or 15.2-2303 of the Code of Virginia prior to July 1, 2008, such entrances shall be exempt from the spacing standards for entrances and intersections in Appendix F of the Road Design Manual (see 24VAC30-70-170 A) provided the requirements of §15.2-2307 of the Code of Virginia have been met. Entrances shown on a subdivision plat, site plan, preliminary subdivision plat that is valid pursuant to §§15.2-2260 and 15.2-2261 approved in accordance with §§15.2-2286 and 15.2-2241 through 15.2-2245 prior to July 1, 2008, shall be exempt from the spacing standards for entrances and intersections in Appendix F of the Road Design Manual.

C. The Commonwealth Transportation Board has the authority to designate highways as limited access and to regulate access rights to those facilities as provided in §33.1-58 of the Code of Virginia. No private or commercial entrances shall be permitted within limited access rights-of-way except as may be provided for by the regulation titled Change of Limited Access Control (24VAC30-401).

D. Notwithstanding Part IV (24VAC30-150-1680 et seq.) of the Land Use Permit Manual and the Minimum Standards of Entrances to State Highways (24VAC30-71) after the effective implementation date as set forth in 24VAC30-72-30 the district administrators or their designees are authorized to issue private entrance permits and commercial entrance permits in accordance with the provisions of this chapter.

E. In cases where the provisions and requirements of this chapter conflict with the Land Use Permit Manual (24VAC30-150) and the Minimum Standards of Entrances to State Highways (24VAC30-71), the provisions and requirements of this chapter shall govern.

24VAC30-72-30. Application to principal arterials.

A. This chapter shall apply on July 1, 2008, to highways with a functional classification as a principal arterial.

B. Entrance permits to a highway that does not have a functional classification as a principal arterial shall be governed by the provisions of the Land Use Permit Manual (24VAC30-150) and the Minimum Standards of Entrances to State Highways (24VAC30-71).

C. The permittee must restore, at the permittee's cost, all disturbed highway rights-of-way, including, but not limited to, ditches, shoulders, roadside and pavement, to their original condition when removing the entrance. All such restorations are subject to approval of the district administrator's designee.

24VAC30-72-40. Administrative procedures and rules for obtaining commercial and private entrance permits.

All applications for entrance permits shall be obtained from and submitted to the district administrator's designee for the county in which the work is to be performed. The permit applicant shall submit the permit application form, and the entrance permit, if approved, will be issued in accordance with the applicable administrative rules, requirements and procedures of this chapter and the Land Use Permit Manual (24VAC30-150).

24VAC30-72-50. Appeal and exception procedure.

A. The permit applicant may appeal denial or revocation or conditions imposed by a permit in writing to the district administrator with a copy to the district administrator's designee and the chief administrative officer of the locality where the entrance is proposed.

1. All appeals must be received within 30 days of receipt of written notification of denial or revocation or issuance of a permit with contested conditions and must set forth the grounds for the appeal and include copies of all prior correspondence with any local government official and VDOT representatives regarding the issue or issues. The permit applicant may request a meeting with the district administrator concerning the appeal and the district administrator will set a date, time, and location for such meeting.

2. After reviewing all pertinent information, the district administrator will advise the permit applicant in writing regarding the decision on the appeal within 60 days of receipt of the written appeal request or such longer timeframe jointly agreed to by the parties, with a copy to the district administrator's designee and the chief administrative officer of the locality where the entrance is proposed.

3. The permit applicant may further appeal the district administrator's decision to the commissioner within 30 days of receipt of written notification of the district administrator's decision. The commissioner will advise the permit applicant in writing regarding the decision on the appeal within 60 days of receipt of the written appeal request, with a copy to the district administrator and the chief administrative officer of the locality where the entrance is proposed.

B. The commissioner may grant an exception to the required sight distance after a traffic engineering investigation has been performed.

1. If a sight distance exception is requested, the permit applicant shall provide such request in writing to the commissioner with a copy to the district administrator's designee and the chief administrative officer of the locality where the entrance is proposed and shall furnish the commissioner with a traffic engineering investigation report, prepared by a professional engineer. The methodology and format of the report shall be in conformance with requirements set forth in the Manual on Uniform Traffic Control Devices (see 24VAC30-72-170 D).

2. The commissioner will advise the permit applicant in writing regarding the decision on the sight distance exception request within 60 days of receipt of the written exception request or such longer timeframe jointly agreed to by the parties, with a copy to the district administrator's designee and the chief administrative officer of the locality where the entrance is proposed.

24VAC30-72-60. General provisions governing commercial and private entrances.

A. No entrance of any nature may be constructed within the right-of-way until the location has been approved by VDOT and an entrance permit has been issued. The violation of any provision of this chapter and any condition of approval of an entrance permit shall be subject to the penalties for violations specified in the Land Use Permit Manual (24VAC30-150).

B. VDOT will permit reasonably convenient access to a parcel of record. VDOT is not obligated to permit the most convenient access, nor is VDOT obligated to approve the permit applicant's preferred entrance location or entrance design. If a parcel is served by more than one road in the systems of state highways, the district administrator's designee shall determine upon which road or roads the proposed entrance or entrances is or are to be constructed.

C. When two or more properties are to be served by the same entrance, the permit applicant shall ensure that there is a recorded agreement between the parties specifying the use and future maintenance of the entrance. A copy of this recorded agreement shall be included in the entrance permit application submitted to the district administrator's designee. The shared entrance shall be identified on any site plan or subdivision plat of the property.

D. The district administrator's designee may require the permit applicant to alter any proposed entrance location or design, whether private or commercial, to obtain the best possible operational characteristics, including, but not limited to, sight distance and entrance spacing.

E. Entrance standards established by localities that are stricter than those of VDOT shall govern.

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24VAC30-72-70. Commercial entrance design.

A. All commercial entrance design and construction shall comply with the provisions of this chapter and the standards in the Road Design Manual (see 24VAC30-72-170 A), the Road and Bridge Standards (see 24VAC30-72-170 C), the Road and Bridge Specifications (see 24VAC30-72-170 B), other VDOT engineering and construction standards as may be appropriate, and any additional conditions, restrictions, or modifications deemed necessary by the district administrator's designee to preserve the safety, use and maintenance of the systems of state highways. Entrance design and construction shall comply with applicable guidelines and requirements of the Americans with Disabilities Act of 1990 (42 USC §12101 et seq.). Ramps for curb sections shall be provided as required in §15.2-2021 of the Code of Virginia. The standard drawing for depressed curb ramp as shown in the Road and Bridge Standards (see 24VAC30-72-170 C) shall be utilized in the design.

1. In the event an entrance is proposed within the limits of a funded roadway project that will ultimately change a highway, the permit applicant may be required to construct, to the extent possible, entrances compatible with the roadway's ultimate design.

2. All entrance design and construction shall accommodate pedestrian and bicycle users of the abutting highway in accordance with the Commonwealth Transportation Board's "Policy for Integrating Bicycle and Pedestrian Accommodations" (see 24VAC30-72-170 H).

3. All entrance design and construction shall accommodate transit users of the abutting highway where applicable and provide accommodations to the extent possible.

4. Based on the existing and planned developments, the district administrator's designee will determine the need for curb and gutter, sidewalks, or other features within the general area of the proposed entrance in accordance with the requirements of this chapter and the design standards in Appendix F of the Road Design Manual (see 24VAC30-72-170 A).

5. Sites accessed by an entrance shall be designed so as to prevent unsafe and inefficient traffic movements from impacting travel on the abutting highway. At the request of the district administrator's designee, the permit applicant shall furnish a report that documents the impact of expected traffic movements upon the function of the abutting highway during the peak hours of the abutting highway.

B. It is essential that entrance and site design allow safe and efficient movements of traffic using the entrance while minimizing the impact of such movements on the operation of the systems of state highways.

1. The permit applicant shall supply sufficient information to demonstrate to the satisfaction of the district administrator's designee that neither the entrance, nor the proposed traffic circulation patterns within the parcel, will compromise the safety, use, operation, or maintenance of the abutting highway. A rezoning traffic impact statement or a site plan/subdivision plat supplemental traffic analysis submitted for a proposed development of a parcel in accordance with the Traffic Impact Analysis Regulations (24VAC30-155) may be used for this purpose, provided that it adequately documents the effect of the proposed entrance and its related traffic on the operation of the highway to be accessed.

2. If the proposed entrance will cause the systems of state highways to experience degradation in safety or a significant increase in delay or a significant reduction in capacity beyond an acceptable level of service, the applicant shall be required to submit a plan to mitigate these impacts and to bear the costs of such mitigation measures.

3. Proposed mitigation measures must be approved by the district administrator's designee prior to permit approval. Mitigation measures that may be considered include but are not limited to:

a. Construction of auxiliary lanes or turning lanes, or pavement transitions/tapers;

b. Construction of new crossovers, or the relocation, removal, or consolidation of existing crossovers;

c. Installation, modification, or removal of traffic signals and related traffic control equipment;

d. Provisions to limit the traffic generated by the development served by the proposed entrance;

e. Dedication of additional right-of-way or easement, or both, for future road improvements;

f. Reconstruction of existing roadway to provide required vertical and horizontal sight distances;

g. Relocation or consolidation of existing entrances; or

h. Recommendations from adopted corridor studies, design studies, other access management practices and principles, or any combination of these, not otherwise mentioned in this chapter.

4. If an applicant is unwilling or unable to mitigate the impacts identified in the traffic impact analysis, the entrance shall be physically restricted to right-in or right-out movements or both or similar restrictions such that the public interests in a safe and efficient flow of traffic on the systems of state highways are protected.

24VAC30-72-80. Minimum sight distance for commercial entrances.

A. No less than minimum intersection sight distance shall be obtained for any commercial entrance. Sight distances shall be measured in accordance with VDOT practices, and sight distance requirements shall conform to VDOT standards as described in Appendix F of the Road Design Manual (see 24VAC30-72-170 A). The legal speed limit shall be used unless the design speed is available and approved for use by VDOT.

B. The operating speed may be used in lieu of the legal speed limit in cases where the permit applicant furnishes the district administrator's designee with a speed study prepared in accordance with the Manual on Uniform Traffic Control Devices (see 24VAC30-72-170 D) methodology that demonstrates the operating speed of the segment of highway is lower than the legal speed limit and, in the judgment of the district administrator's designee, use of the operating speed will not compromise safety for either a driver at an entrance or a driver on the abutting highway.

C. VDOT may require that the vertical or horizontal alignment of the existing roadway be adjusted to accommodate certain design elements of a proposed commercial entrance including, but not limited to, median openings, crossovers, roundabouts, and traffic signals, where adjustment is deemed necessary. The cost of any work performed to adjust the horizontal or vertical alignment of the roadway to achieve required intersection sight distance at a proposed entrance shall be borne by the permit applicant.

24VAC30-72-90. Private entrances.

A. The property owner shall identify the desired location of the private entrance with the assistance of the district administrator's designee. If the minimum intersection sight distance cannot be met, the entrance should be placed at the location with the best possible sight distance as determined by the district administrator's designee. The district administrator's designee may require the property owner to grade slopes, clear brush, remove trees, or conduct other similar efforts, or any combination of these, to provide the safest possible means of ingress and egress that can be reasonably achieved.

B. The property owner shall obtain an entrance permit and, on shoulder and ditch section roads, shall be responsible for installing the private entrance in accordance with VDOT policies and engineering standards. The property owner may request VDOT to perform the stabilization of the shoulder and installation of the entrance pipe. In such cases, VDOT may install the private entrance pipe and will stabilize the shoulder at the property owner's expense. If VDOT installs these portions of the entrance, a cost estimate for the installation will be provided to the property owner; however, VDOT will bill the property owner the actual cost of

installation. The property owner shall be responsible for all grading beyond the shoulder.

C. Grading and installation of a driveway from the edge of the pavement to the right-of-way line shall be the responsibility of the property owner.

D. Installation of a private entrance on a curb and gutter street shall be the responsibility of the property owner.

E. Maintenance of private entrances shall be by the owner of the entrance, except that VDOT shall maintain:

1. On shoulder section roadways, that portion of the entrance within the normal shoulder portion of the roadway.
2. On roadways with ditches, the drainage pipe at the entrance.
3. On roadways with curb, gutter, and sidewalk belonging to VDOT, that portion of the entrance that extends to the back of the sidewalk. If a sidewalk is not present, to the back of the curb line.
4. On roadways with curb, gutter, and sidewalk not belonging to VDOT, only to the flow line of the gutter pan.
5. On roadways with shoulders, ditches, and sidewalk belonging to VDOT, that portion of the entrance that extends to the back of the sidewalk.

24VAC30-72-100. Commercial entrances - coordination with local governments.

A. For all commercial entrances, the permit applicant shall contact and coordinate with appropriate local government agencies to identify possible conflicts with local, state or federal regulations and plans, including but not limited to local zoning and subdivision regulations, environmental regulations, land use plans, transportation plans, corridor studies, and access management plans.

B. If local governments have established site plan/subdivision plat approval processes for developments, VDOT will not approve a commercial entrance permit for the development prior to the local government's approval of the site plan or subdivision plat for the development. If neither a local government site plan nor a subdivision plat approval process is applicable, VDOT will not approve a commercial entrance permit for the development prior to the local government's approval of any applicable land use authorization for the development.

C. Any transportation-related funds, real property, or improvements committed to or received by a local government through the land use regulatory process does not release the applicant from fees and improvements required by VDOT. When a local government requires improvements to the abutting state highway in accordance with the locality's adopted transportation plan, VDOT may require additional

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improvements to ensure the safety and capacity of the proposed entrances and to manage existing entrances along the highway.

24VAC30-72-110. Tenure of commercial entrances.

A. The tenure of a commercial entrance to any highway is conditional. Reconstruction, relocation, commercial entrance consolidation, or upgrading, or a combination of these, may be required at the owner's cost when the district administrator's designee determines after review that one of the conditions listed below exists. If the necessary changes are not made, the entrance may be closed at the direction of the district administrator's designee.

1. Safety - When the entrance has been found to be unsafe for public use in its present condition because of physical degradation of the entrance, increase in motor vehicle traffic, or some other safety-related condition.
2. Use - When traffic in and out of the entrance has changed significantly to require modifications or reconstruction, or both. Such changes may include, but are not limited to, changes in traffic volume or operational characteristics of the traffic.
3. Maintenance - When the entrance becomes unserviceable due to heavy equipment damage or reclamation by natural causes.

B. VDOT will maintain the commercial entrance only within the normal shoulder of the roadway or to the flow line of the gutter pan. The owner shall maintain all other portions of the entrance, including entrance aprons, curb and gutter, culvert and drainage structures.

C. Commercial entrances may also be reviewed by the district administrator's designee when any of the following occur:

1. The property is being considered for rezoning or other local legislative action that involves a change in use of the property.
2. The property is subject to a site plan or subdivision plat review.
3. There is a change in commercial use either by the property owner or by a tenant.
4. Vehicular/pedestrian circulation between adjoining properties becomes available.

These periodic reviews are necessary to provide both the driver and other highway users with a safe and operationally efficient means of travel on state highways.

24VAC30-72-120. Commercial entrance access management.

A. As commercial entrance locations and designs are prepared and reviewed, appropriate access management

regulations and standards shall be utilized to ensure the safety, integrity and operational characteristics of the transportation system are maintained. The proposed commercial entrance shall meet the access management standards contained in Appendix F of the Road Design Manual (see 24VAC30-72-170 A) and the regulations in this chapter to provide the users of such entrance with a safe means of ingress and egress while minimizing the impact of such ingress and egress on the operation of the highway. As part of any commercial entrance permit review, the district administrator's designee will determine what improvements are needed to preserve the operational characteristics of the highway, accommodate the proposed traffic and, if entrance design modifications are needed, incorporate them accordingly to protect the transportation corridor. If the location of the entrance is within the limits of an access management plan approved by the local government and VDOT, the plan should guide the district administrator's designee in determining the appropriate design and location of the entrance. Access management requirements, in addition to the regulations in this chapter, include but are not limited to:

1. Restricting commercial entrance locations. To prevent undue interference with free traffic movement and to preserve safety, entrances to the highways shall not be permitted within the functional areas of intersections, roundabouts, railroad grade crossings, interchanges or similar areas with sensitive traffic operations. Only the commissioner may grant an exception to this requirement in accordance with the procedures set forth in 24VAC30-72-50 B.

2. Entrances shared with adjoining properties. To reduce the number of entrances to state highways, the district administrator's designee shall require that shared entrances be created and designed to serve adjoining parcels unless the permit applicant submits compelling evidence that a reasonable agreement cannot be reached with adjoining property owners or that there are physical constraints, including but not limited to topography, environmentally sensitive areas, and hazardous uses, to creating a shared entrance. A copy of the property owners' recorded agreement to share use of and maintain the entrance shall be submitted with the permit application for a shared entrance. The shared entrance shall be identified on any site plan or subdivision plat of the property. A permit applicant shall not be required to follow the procedures for an appeal set forth in 24VAC30-72-50 to receive an exception to the requirements of this subdivision.

3. Spacing of entrances and intersections. The spacing of proposed entrances and intersections shall comply with the spacing standards for entrances and intersections in Appendix F of the Road Design Manual (see 24VAC30-72-170 A) except as specified below.

a. On older, established business corridors of a locality within an urban area where existing entrances and intersections did not meet the spacing standards prior to July 1, 2008, spacing for new entrances and intersections may be allowed by the district administrator's designee that is consistent with the established spacing along the highway, provided that reasonable efforts are made to comply with the other access management requirements of this section including restricting entrances within the functional areas of intersections, sharing entrances with and providing vehicular and pedestrian connections between adjoining properties, and physically restricting entrances to right-in or right-out or both movements.

b. Where a developer proposes a development within a designated urban development area as defined in §15.2-2223.1 of the Code of Virginia and other comparable local designations that fully incorporates principles of new urbanism and traditional neighborhood development, which may include but need not be limited to (i) pedestrian-friendly road design, (ii) interconnection of new local streets with existing local streets and roads, (iii) connectivity of road and pedestrian networks, (iv) preservation of natural areas, (v) satisfaction of requirements for stormwater management, (vi) mixed-use neighborhoods, including mixed housing types, (vii) reduction of front and side yard building setbacks, and (viii) reduction of subdivision street widths and turning radii at subdivision street intersections, the district administrator's designee may approve spacing standards for entrances and intersections internal to the development that differ from the otherwise applicable spacing standards provided that such entrances and intersections meet the intersection sight distance standards specified in Appendix F of the Road Design Manual (see 24VAC30-72-170 A).

c. Where a development's second or additional commercial entrances are necessary for the streets in the development to be eligible for acceptance into the secondary system of state highways and such commercial entrances cannot meet the spacing standards for highways, the district administrator's designee shall waive such state requirements that necessitate second or additional commercial entrances.

4. Vehicular/pedestrian circulation between adjoining properties. To facilitate traffic circulation between adjacent properties, reduce the number of entrances to the highway, and maximize use of new signalized intersections, the permit applicant shall be required to record access easements and to construct vehicular connections (which may include frontage roads or reverse frontage roads) in such a manner that affords safe and efficient future access between the permit applicant's property and the adjoining properties. Where appropriate, the permit applicant also

shall construct pedestrian connections to the boundary lines of adjoining undeveloped properties.

a. Such connections shall not be required if there are physical constraints to making such connections between properties including but not limited to topography, environmentally sensitive areas, and hazardous uses.

b. At such time that a commercial entrance permit application is submitted for the adjoining property, a condition of permit issuance shall be to extend such vehicular/pedestrian connections into the proposed development.

c. If a permit applicant cannot or does not wish to comply with this requirement, the permit applicant's entrance shall be physically restricted to right-in or right-out movements or both or similar restrictions such that the public interests in a safe and efficient flow of traffic on the systems of state highways are protected.

d. Development sites under the same ownership or consolidated for the purposes of development and comprised of more than one building site shall provide a unified access and circulation system between the sites.

5. Traffic signal spacing. To promote the efficient progression of traffic on highways, commercial entrances that are expected to serve sufficient traffic volumes and movements to require signalization shall not be permitted if the spacing between the entrance and at least one adjacent signalized intersection is below signalized intersection spacing standards in Appendix F of the Road Design Manual (see 24VAC30-72-170 A). If sufficient spacing between adjacent traffic signals is not available, the entrance shall be physically restricted to right-in or right-out movements or both or similar restrictions such that the public interests in a safe and efficient flow of traffic on the systems of state highways are protected and preserved.

6. Limiting entrance movements. To preserve the safety and function of certain highways, the district administrator's designee may require an entrance to be designed and constructed in such a manner as to physically prohibit certain traffic movements.

B. A request for an exception from the access management requirements subsection A of this section shall follow the procedures for an appeal set forth in 24VAC30-72-50. In addition such request shall include specific and documented reasons based on a traffic engineering investigation report prepared showing that highway operation and safety will not be adversely impacted by the requested exception.

C. VDOT may work with a locality or localities on access management corridor plans. Such plans may allow for spacing standards that differ from and supersede the spacing standards for entrances and intersections in Appendix F of the

Regulations

Road Design Manual (see 24VAC30-72-170 A), subject to approval by the commissioner.

24VAC30-72-130. Drainage.

A. Commercial and private entrances shall be constructed so as not to impair drainage within the right-of-way and so that surface water shall drain from the roadway.

B. Where deemed necessary by the district administrator's designee, a commercial entrance applicant shall provide copies of a complete drainage layout based on a drainage study by a licensed design professional. This layout shall clearly show how the permit applicant proposes to handle the drainage and run-off from applicant's development.

C. Pipe ends of culverts shall be reviewed independently by the district administrator's designee and grading or treatment at pipe ends shall minimize any hazard the pipe ends or structures may present to an errant vehicle.

24VAC30-72-140. Drive-in theaters.

A drive-in theater is a specialized commercial entrance. In addition to the commercial entrance regulations set forth in this part, the conditions set forth in §33.1-12 (15) of the Code of Virginia shall be satisfied in order to construct entrances to drive-in theaters.

24VAC30-72-150. Temporary entrances (construction/logging entrances).

A. Construction of temporary construction or logging entrances upon the systems of state highways shall be authorized in accordance with the provisions in the Land Use Permit Manual (24VAC30-150). The permit applicant must contact the appropriate district administrator's designee to approve the location prior to installing an entrance or utilizing an existing entrance. The district administrator's designee shall also be contacted to arrange and conduct a final inspection prior to closing a temporary construction or logging entrance. In the event that adequate sight distance is not achieved, additional signage that meets the Manual on Uniform Traffic Control Devices standards (see 24VAC30-72-170 D) and certified flaggers shall be used to ensure safe ingress and egress.

B. Entrances shall be designed and operated in such a manner as to prevent mud and debris from being tracked from the site onto the highway's paved surface. If debris is tracked onto the highway, it shall be removed by the permittee immediately as directed by the district administrator's designee.

C. The permittee must restore, at the permittee's cost, all disturbed highway rights-of-way, including, but not limited to, ditches, shoulders, roadside and pavement, to their original condition when removing the entrance. All such restorations are subject to approval by the district administrator's designee.

24VAC30-72-160. Access to public waters.

VDOT may grant the use of portions of the highway right-of-way for access to public waters upon written request from the Executive Director of the Virginia Department of Game and Inland Fisheries to the commissioner. The district administrator's designee may require that a commercial entrance permit be obtained in accordance with the provisions of this chapter for entrances that will provide access to landings, wharves, and docks.

24VAC30-72-170. Documents incorporated by reference.

A. Road Design Manual (effective January 1, 2005, revised July 2008)

Note: Appendix F (Access Management Design Standards for Entrances and Intersections) contains the access management standards referenced in Chapters 863 and 928 of the 2007 Acts of Assembly and Chapters 274 and 454 of the 2008 Acts of Assembly.

Location and Design Division (VDOT)
Location and Design Engineer
1401 E. Broad Street
Richmond, Virginia 23219

B. 2007 Road and Bridge Specifications (effective July 2008)

Scheduling and Contract Division (VDOT)
State Contract Engineer
1401 E. Broad Street
Richmond, Virginia 23219

C. Road and Bridge Standards (effective February 1, 2001)

Location and Design Division (VDOT)
Location and Design Engineer
1401 E. Broad Street
Richmond, Virginia 23219

D. The Manual on Uniform Traffic Control Devices for Streets and Highways, 2003 Edition (effective December 22, 2003, revised November 2004)

Federal Highway Administration
Superintendent of Documents
U.S. Government Printing Office
P.O. Box 371954
Pittsburgh, PA 15250-7954

E. A Policy on Geometric Design of Highways and Streets, Fifth Edition, 2004

American Association of State Highway and Transportation Officials (AASHTO)
444 North Capitol St. N.W., Suite 225
Washington, D.C. 20001

F. Change of Limited Access Control, 24VAC30-401

Traffic Engineering Division (VDOT)

1401 E. Broad St.
Richmond, VA 23219

G. Land Use Permit Manual, 24VAC30-150

Asset Management Division (VDOT)

1401 E. Broad St.
Richmond, VA 23219

H. Policy for Integrating Bicycle and Pedestrian Accommodations, eff. March 18, 2004

Asset Management Division (VDOT)

1401 E. Broad St.
Richmond, VA 23219

I. Highway Capacity Manual 2000

Transportation Research Board

500 Fifth Street, NW
Washington, DC 20001

J. Traffic Impact Analysis Regulations, 24VAC30-155

Asset Management Division (VDOT)

1401 E. Broad St.
Richmond, VA 23219

K. Minimum Standards of Entrances to State Highways, 24VAC30-71

Traffic Engineering Division

1401 E. Broad St.
Richmond, VA 23219

FORMS

LUP-A - Land Use Permit Application (revised 1/2005).

LUP-SP - Special Provisions (Notice of Permittee Liability) (revised 11/2007).

LUP-CSB - Corporate Surety Bond (revised 1/2005).

LUP-LC - Irrevocable Letter of Credit Bank Agreement (revised 1/2005).

LUP-SB - Surety Bond (revised 1/2005).

VA.R. Doc. No. R08-956; Filed April 3, 2008, 3:00 p.m.

GENERAL NOTICES/ERRATA

STATE AIR POLLUTION CONTROL BOARD

Proposed Request for U.S. Environmental Protection Agency Approval of an Alternative Air Quality Model Request

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed request for U.S. Environmental Protection Agency (EPA) approval of an alternative air quality model.

Purpose of notice: DEQ is seeking comment on the issue of whether a request for approval of an alternative model to assess the air quality impact of a variance to control opacity emissions from the Aerojet Orange County Facility should be submitted to EPA.

Public comment period: April 1, 2008, to May 1, 2008.

Public hearing: A public hearing may be conducted if a request is made in writing to the contact listed below. In order to be considered, the request must include the full name, address and telephone number of the person requesting the hearing and be received by DEQ by 5 p.m. on the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Description of proposal: On September 30, 2002, the State Air Pollution Control Board adopted an opacity variance (9VAC5-220) for the rocket motor test operations at Atlantic Research Corporation's Orange County facility from the standard for visible emissions in 9VAC5-50-80. In lieu of compliance with this standard, the variance required the facility to limit total particulate matter emissions from its rocket motor test operations to 714 pounds per hour. This variance was submitted to EPA as a revision to the Virginia state implementation plan (SIP) on January 26, 2004. Subsequently, the facility was purchased by Aerojet Corporation.

The January 2004 SIP submittal contained a technical support document that provided a basis for proposed hourly limit for particulate matter emissions from the rocket motor testing operations. Aerojet's air quality analysis included, in lieu of an EPA-approved model, the Open Burn/Open Detonation (OB/OD) dispersion model. 40 CFR 51.112(a)(2) requires that a modification or substitution of an air quality model specified in the Guideline on Air Quality Models may be allowed on a case-by-case basis if approved in writing by EPA. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in 40 CFR 51.102.

The Commonwealth therefore intends to request, in accordance with 40 CFR 51.112(a)(2), that the Open

Burn/Open Detonation (OB/OD) dispersion model (version 01.3.0021) be used in the dispersion modeling protocol.

How to comment: DEQ accepts written comments by email, facsimile transmission and postal mail. In order to be considered, comments must include the full name, address and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period. Due to problems with the quality of facsimile transmissions, commenters are encouraged to provide the signed original by postal mail within one week. All testimony, exhibits and documents received are part of the public record.

To review regulation documents: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website (<http://www.deq.virginia.gov/air/permitting/plannotes.htm>). The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following locations:

1. DEQ Main Street Office, 8th Floor, 629 E. Main Street, Richmond, Virginia, (804) 698-4070, and
2. DEQ Fredericksburg Satellite Office, 806 Westwood Office Park, Fredericksburg, Virginia, (540) 899-4600.

Agency Contact: Mike Kiss, Coordinator, Air Quality Assessments Group, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email mfkiss@deq.virginia.gov.

DEPARTMENT OF CONSERVATION AND RECREATION

Total Maximum Daily Load - Bluestone River

The Virginia Department of Conservation and Recreation seeks written and oral comments from interested persons on the development of an implementation plan (IP) for total maximum daily loads (TMDLs) to address water quality impairments on the Bluestone River in Tazewell County and Town of Bluefield. This stream was identified as impaired due to violations of Virginia's water quality standards for fecal coliform bacteria and the general standard for aquatic life and therefore does not support the recreational use or aquatic life standards. The impairment segment is 13.21 miles in length and extends from the Wrights Valley Creek confluence, near the western Bluefield town limit, to the Virginia/West Virginia state line. TMDLs for the Bluestone River were completed and approved by EPA in 2004 and are available on DEQ's website at <http://www.deq.virginia.gov/tmdl>.

Section 62.1-44.19.7 C of the Code of Virginia requires the development of an IP for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits and environmental impacts.

The first public meeting on the development of the IP for Bluestone River impairments will be held on Tuesday, April 29, 2008, at 7 p.m. at the Town of Bluefield Municipal Building. The purpose of the meeting is to discuss the IP development process and to solicit public participation in assisting with the plan. Following the public meeting, two working group meetings will be held: a residential/urban working group meeting and an agricultural working group meeting. The purpose of the working groups is to collect specific information on residential, urban, and agricultural sources of bacteria and sediment in the watershed, and to discuss methods by which to achieve the necessary reductions from these sources to meet the TMDLs.

The public comment period for this public meeting will end on May 29, 2008. Questions or information requests should be addressed to Martha Chapman. Written comments and inquires should include the name, address, and telephone number of the person submitting the comments and should be sent to Martha Chapman, Virginia Department of Conservation and Recreation, 252 West Main Street, Suite 3, Abingdon, VA 24210, telephone (276) 676-5529, or email martha.chapman@dcr.virginia.gov.

STATE CORPORATION COMMISSION

Bureau of Insurance

AT RICHMOND, APRIL 2, 2008

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUE-2007-00107

Ex Parte: In the matter of establishing rules and regulations to implement the sale of electricity from renewable sources through a renewable energy portfolio standard program pursuant to § 56-585.2 of the Code of Virginia

ORDER

The State Corporation Commission ("Commission") has responded to the General Assembly's directive in the 2007 Acts of Assembly at Chapter 933 ("Chapter 933"),¹ which

¹ Chapter 933 (SB 1416) amends and reenacts §§ 56-233.1, 56-234.2, 56-235.2, 56-235.6, 56-249.6, 56-576 through 56-581, 56-582, 56-584, 56-585, 56-587, 56-589, 56-590, and 56-594 of the Code of Virginia ("Code"); amends the Code by adding sections

directs the Commission to afford, among other things, incentives for regulated electric utilities to implement or increase the sale of electricity from renewable sources through development of a program emphasizing a "renewable energy portfolio standard" ("RPS"). On December 3, 2007, the Commission established this proceeding pursuant to the General Assembly's enactment of § 56-585.2 G of the Code directing the Commission to "promulgate such rules and regulations as may be necessary to implement the provisions of this section including a requirement that participants verify whether the RPS goals are met in accordance with this section."

Pursuant to our Order Establishing Proceeding, the Commission posed seven issues and/or questions for stakeholder comment before considering any rulemaking under § 56-585.2 G of the Code.² The following six parties filed comments: the Office of the Attorney General, Division of Consumer Counsel; Appalachian Power Company; the Virginia Committee for Fair Utility Rates and the Old Dominion Committee for Fair Utility Rates; Virginia Electric and Power Company; Virginia Pulp & Paper Manufacturers Commenters including MeadWestvaco, International Paper, Smurfit-Stone Container Enterprises, Inc. and Georgia Pacific; the Virginia Members of the VMD Association of Electric Cooperatives³ and Old Dominion Electric Cooperative.

Following issuance of the Commission's Order Establishing Proceeding, Appalachian Power Company filed on January 22, 2008, an application for approval to participate in the Virginia Renewable Energy Portfolio Program, Case No. PUE-2008-00003, on which we now take judicial notice. The Commission issued on March 13, 2008, in said Case No. PUE-2008-00003, an Order for Notice and Comment which, among other things, prescribed notice to be published and provided for comments and requests for hearing, directed a Staff Report to be filed, and provided for discovery with a Hearing Examiner assigned to rule on any discovery matter arising.

NOW THE COMMISSION, having considered the comments filed herein and upon taking judicial notice of the pending application by Appalachian Power Company in Case No. PUE-2008-00003, is of the opinion that promulgation of rules in this proceeding is not "necessary" at this time to "implement the provisions of" § 56-585.2 G of the Code. We

numbered 56-585.1, 56-585.2, and 56-585.3; and repeals §§ 56-581.1 and 56-583 of the Code, relating to the regulation of electric utility service.

² The reader may refer to pages 2-4 of the Order Establishing Proceeding, issued December 3, 2007, for a full statement of the issues presented for comment.

³ The Virginia member cooperatives include A&N Electric Cooperative, BARC Electric Cooperative, Central Virginia Electric Cooperative, Community Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Northern Virginia Electric Cooperative, Powell Valley Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Electric Cooperative, and Southside Electric Cooperative.

General Notices/Errata

also note, for example, that issues raised in this docket by the commenters may be addressed, to the extent relevant, on case-by-case basis. The Commission may elect later to proceed, *sua sponte*, to consider rulemaking in a future docket if it appears that implementation of § 56-585.2 of the Code cannot be carried out effectively on a case-by-case basis under existing Commission rules.

Accordingly, IT IS HEREBY ORDERED THAT this case is dismissed.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: John A. Pirko, Esquire, LeClair Ryan, P.C., 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060; Cliona M. Robb, Esquire, Christian & Barton, L.L.P., 909 East Main Street, Suite 1200, Richmond, Virginia 23219-3095; Donald J. Sipe, Esquire, Preti Flaherty Beliveau & Pachios, LLP, 45 Memorial Circle, P.O. Box 1058, Augusta, Maine 04332-1058; Charles E. Bayless, Esquire, American Electric Power Company, 1 Riverside Plaza, Columbus, Ohio 43215; Vishwa B. Link, Esquire, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; and the Commission's Office of General Counsel and Division's of Economics and Finance, Energy Regulation, and Public Utility Accounting.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Broad Creek, Jackson Creek and Fishing Bay - No Discharge Zone

Notice: The Virginia Department of Environmental Quality is considering submittal of a request to the U.S. Environmental Protection Agency to designate the Broad Creek, Jackson Creek and Fishing Bay watersheds in Middlesex County as a vessel No Discharge Zone.

Public comment period: May 5, 2008, to June 4, 2008.

Public meeting: A public meeting will be held at the Deltaville Community Center, 17147 Puller Highway, Deltaville, Virginia, on May 5, 2008, at 7 p.m., to discuss this designation and to answer questions from the public.

Background information: In order to improve water quality in Broad Creek, a tributary to the Rappahannock River, Jackson Creek and Fishing Bay, tributaries to the Piankatank River, which are listed as impaired waterways for bacteria and nutrients on the Virginia List of Impaired Waters, the Department proposes to request the No Discharge Zone designations from the U.S. Environmental Protection Agency. If the designation is received for these waters, they will be established as No Discharge Zones, which means that all discharges of sewage from vessels, whether treated or

untreated, would be prohibited, and sewage wastes must be contained until removed at pump out facilities. Untreated discharges of sewage from vessels are currently prohibited by state regulation, so the regulation amendment primarily will impact vessels with waste treatment systems that discharge treated sewage. If the U.S. Environmental Protection Agency grants the designation the Department of Environmental Quality and the State Water Control Board will amend state regulation 9VAC 25-71, "Regulations Governing Discharge of Sewage and Other Wastes from Boats" to add the Broad Creek, Jackson creek and Fishing Bay watersheds to the list of designated No Discharge Zones in the state.

Locality particularly affected: The community of Deltaville, Virginia, and Middlesex County, Virginia.

How to comment: The Department of Environmental Quality accepts written comments by email, fax and postal mail. All written comments must include the full name, address and telephone number of the person commenting and must be received by the department by 5 p.m. on the last day of the comment period.

Contact information for submitting comments or requesting information: Chester Bigelow, Department of Environmental Quality, P.O. Box, Richmond, VA 23218, telephone (804) 698-4554, FAX (804) 698-4116, or email cbbigelow@deq.virginia.gov.

Proposed Consent Order - Buckingham County

Citizens may comment on a proposed consent order for Buckingham County, Virginia.

Public comment period: April 28, 2008, to May 28, 2008.

Purpose of notice: To invite the public to comment on a proposed amendment to a consent order. A consent order is issued to a business owner or other responsible party to perform specific actions that will bring the entity into compliance with the relevant law and regulations. It is developed cooperatively with the county and entered into by mutual agreement.

Consent order description: The Department of Environmental Quality (DEQ) proposes to issue a consent order to Buckingham County to address violations occurring at the Town of Dillwyn Sewage Treatment Plant. The consent order describes a settlement to resolve copper effluent limit violations of VPDES Permit No. VA0027294 and State Water Control Law.

How a decision is made: After public comments have been considered, DEQ will make a final decision.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by close of business on the final day of the public comment period.

To review the consent order: The public may review the proposed consent order at the office listed below, or on the DEQ website at www.deq.virginia.gov.

Contact for public comments, document requests and additional information: G. Marvin Booth, III, Department of Environmental Quality, South Central Regional Office, 7705 Timberlake Road, Lynchburg, VA 24502, telephone (434) 582-5120 ext. 6237, FAX (434) 582-5125, or email gmbooth@deq.virginia.gov.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on April 2, 2008. The orders may be viewed at the State Lottery Department, 900 E. Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia.

Final Rules for Game Operation:

Director's Order Number Eight (08)

Virginia's Instant Game Lottery 1023; "Bee Lucky" (effective 3/28/08)

Director's Order Number Nine (08)

Virginia's Instant Game Lottery 1024; "Lucky Dog" (effective 3/28/08)

Director's Order Number Ten (08)

Virginia's Instant Game Lottery 1047; "Junior Ruby Red 7's" (effective 3/28/08)

BOARD OF NURSING

Notice of Periodic Review

The Board of Nursing has submitted notices of periodic review:

Titles of Regulations: 18VAC90-30, Regulations Governing the Licensure of Nurse Practitioners.

18VAC90-40, Regulations for Prescriptive Authority for Nurse Practitioners.

Public comment period: March 3, 2008, through April 2, 2008.

The Boards of Nursing and Medicine are conducting a periodic review of current regulations governing nurse practitioners and prescriptive authority for nurse practitioners; a request for comment was sent to interested parties.

Contact: Elaine Yeatts, Senior Policy Analyst, Department of Health Professions, 9960 Mayland Drive, Suite 300,

Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

W. & W. Developers, Inc.

Purpose of notice: To seek public comment on the terms of a proposed consent special order issued to W. & W. Developers, Inc., regarding a construction project near Verona in Augusta County, Virginia.

Public comment period: April 28, 2008, through May 27, 2008.

Summary of proposal: The proposed consent special order describes a settlement with W. & W. Developers, Inc., to resolve alleged past violations of the Virginia Stormwater Management Act and Regulations at a construction project near Verona in Augusta County, Virginia. The proposed order requires payment of a \$10,000 civil charge.

How to comment: The Virginia Department of Conservation and Recreation accepts written comments from the public by mail, email, or facsimile. All comments must include the name, address, and telephone number of the person commenting. Comments must be received during the comment period. A copy of the proposed consent special order is available on request from the person identified directly below as the contact.

Contact for public documents, documents, and additional information: Edward A. Liggett, Virginia Department of Conservation and Recreation, 900 Natural Resources Drive, Suite 800-DCR, Charlottesville, VA 22903, telephone (434) 220-9067, FAX (804) 786-1798, or email ed.liggett@dcr.virginia.gov.

Contact Information: David C. Dowling, Policy, Planning, and Budget Director, Virginia 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.

DEPARTMENT OF STATE POLICE

Notice of Periodic Review

The Department of State Police has submitted a notice of periodic review:

Title of Regulation: 19VAC30-10, Public Participation Policy.

Public comment period: April 14, 2008, through May 6, 2008.

General Notices/Errata

The Virginia Department of State Police is conducting a periodic review of Regulations Governing the Department's Public Participation Policy, 19VAC30-10, to ensure that they are current, comply with statutory mandates, and implement the provisions of the Code of Virginia. This review will be conducted beginning on Monday, April 14, 2008, through Tuesday, May 6, 2008.

Contact: Herman C. Davis, Director, BASS, 7700 Midlothian Turnpike, Richmond, VA 23235, telephone (804) 674-4606, or email herman.davis@vsp.virginia.gov.

VIRGINIA WASTE MANAGEMENT BOARD

Proposed Consent Order - Lohmann Specialty Coatings, LLC

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for a facility in Orange, Orange County, Virginia.

Public comment period: April 29, 2008, to May 29, 2008.

Consent order description: The Waste Management Board proposes to issue a consent order to Lohmann Specialty Coatings, LLC to address alleged violations of the of Virginia's regulations. Lohmann Specialty Coatings, LLC is an adhesive coating company located in Orange, Virginia. The consent order describes a settlement to resolve hazardous waste violations.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at www.deq.virginia.gov.

Contact for public comments, document requests and additional information: Daniel Burstein, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge VA 22193, telephone (703) 583-3904, FAX (703) 583-3871, or email dpburstein@deq.virginia.gov.

VIRGINIA STATE WATER CONTROL BOARD

Proposed Consent Order - Wal-Mart Stores East, LP

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for a project in Kilmarnock, Virginia.

Public comment period: April 24, 2008, to May 28, 2008.

Consent order description: The Virginia State Water Control Board proposes to issue a consent order to Wal-Mart Stores East, LP to address alleged violations of the Virginia State Water Control Law and the Virginia Water Protection Permit

Regulations. The alleged violations occurred at Wal-Mart Supercenter #4350, located on Route 3 in the Town of Kilmarnock. The consent order describes a settlement to resolve the alleged violations through the payment of a civil charge and the restoration of impacted wetlands and streams.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at www.deq.virginia.gov.

Contact for public comments, document requests and additional information: Allison C. Dunaway, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5086, FAX (804) 527-5106, or email acdunaway@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

Filing Material for Publication in the Virginia Register of Regulations

Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the Virginia Register of Regulations. The Office of the Virginia Register of Regulations implemented a 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 HOUSING AND COMMUNITY
DEVELOPMENT**

Title of Regulation: **13VAC5-63. Virginia Uniform Statewide Building Code.**

Publication (online full text version): 24:14 VA.R. March 17, 2008.

URL: <http://legis.state.va.us/codecomm/register/vol24/iss14/f13v563fulltext.doc>

Correction to Final Regulation:

Page 84, 13VAC5-63-310 E 2, Table 403.3, under the category "Specialty Shops," subcategory "Beauty and nail salons," change the footnote references from "b,i" to "b,h" so it reads, Beauty and nail salons^{b,h}

VA.R. Doc. No. R07-125; Filed April 18, 2008, 8:30 a.m.

**DEPARTMENT OF MEDICAL ASSISTANCE
SERVICES**

Title of Regulation: **12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care.**

Publication: 22:23 VA.R. 3393-3395 July 24, 2006.

Corrections to Final Regulation:

Page 3394, 12VAC30-80-30 A 6, insert subdivision a as follows and reletter subdivisions a, b, and c to b, c, and d:

- a. For those items that have a national Healthcare Common Procedure Coding System (HCPCS) code, the rate for durable medical equipment shall be set at the Durable Medical Equipment Regional Carrier (DMERC) reimbursement level.

Page 3395, 12VAC30-80-30 A 17 d, line 6, after "(12 VAC 30-80-190 B" add "2"

VA.R. Doc. No. R05-249; Filed April 10, 2008, 12:35 p.m.

Title of Regulation: **12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care.**

Publication: 23:20 VA.R. 3232-3235 June 11, 2007.

Corrections to Final Regulation:

Page 3233, 12VAC30-80-30 A 6, insert subdivision a as follows and reletter subdivisions a, b, and c to b, c, and d:

- a. For those items that have a national Healthcare Common Procedure Coding System (HCPCS) code, the rate for durable medical equipment shall be set at the Durable Medical Equipment Regional Carrier (DMERC) reimbursement level.

Page 3235, 12VAC30-80-30 A 17 d, line 6, after "(12 VAC 30-80-190 B" add "2"

VA.R. Doc. No. R02-318; Filed April 10, 2008, 12:35 p.m.

Title of Regulation: **12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care.**

Publication: 23:20 VA.R. 3235-3241 June 11, 2007.

Corrections to Proposed Regulation:

Page 3238, 12VAC30-80-30 A 6, insert subdivision a as follows and reletter subdivisions a, b, and c to b, c, and d:

- a. For those items that have a national Healthcare Common Procedure Coding System (HCPCS) code, the rate for durable medical equipment shall be set at the Durable Medical Equipment Regional Carrier (DMERC) reimbursement level.

Page 3239, 12VAC30-80-30 A 17 d, lines 5-6, after "(12 VAC 30-80-190 B" add "2"

VA.R. Doc. No. R07-50; Filed April 10, 2008, 12:35 p.m.

