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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 on 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**; **Jane M. Roush**.

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>).

August 2008 through June 2009

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
25:14	February 25, 2009	March 16, 2009
INDEX 2 Volume 25		April 2009
25:15	March 11, 2009	March 30, 2009
25:16	March 25, 2009	April 13, 2009
25:17	April 8, 2009	April 27, 2009
25:18	April 22, 2009	May 11, 2009
25:19	May 6, 2009	May 25, 2009
25:20	May 20, 2009	June 8, 2009
INDEX 3 Volume 25		July 2009
25:21	June 3, 2009	June 22, 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 Spring 2008 VAC Supplement includes final regulations published through *Virginia Register* Volume 24, Issue 7, dated December 10, 2007, and fast-track regulations published through *Virginia Register* Volume 24 Issue 10, dated January 21, 2008). 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 2. Agriculture			
2 VAC 5-30-10	Amended	24:17 VA.R. 2318	6/12/08
2 VAC 5-30-20	Amended	24:17 VA.R. 2318	6/12/08
2 VAC 5-50-20	Amended	24:17 VA.R. 2320	6/12/08
2 VAC 5-50-70	Amended	24:17 VA.R. 2320	6/12/08
2 VAC 5-50-100	Amended	24:17 VA.R. 2320	6/12/08
2 VAC 5-50-110	Amended	24:17 VA.R. 2321	6/12/08
2 VAC 5-90-30	Amended	24:17 VA.R. 2322	6/12/08
2 VAC 5-150-10	Amended	24:17 VA.R. 2323	6/12/08
2 VAC 5-180-20	Amended	24:17 VA.R. 2326	6/12/08
2 VAC 5-180-30	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-50	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-60	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-80	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-120	Amended	24:17 VA.R. 2328	6/12/08
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 5-400-5	Added	24:17 VA.R. 2330	6/12/08
2 VAC 5-420-30	Amended	24:20 VA.R. 2838	5/21/08
2 VAC 5-420-80	Amended	24:20 VA.R. 2840	5/21/08
2 VAC 5-501-80	Amended	24:17 VA.R. 2332	6/12/08
2 VAC 5-501-100	Amended	24:17 VA.R. 2336	6/12/08
2 VAC 5-510-10	Amended	24:17 VA.R. 2340	6/12/08
2 VAC 5-510-50	Amended	24:17 VA.R. 2341	6/12/08
2 VAC 5-510-60	Repealed	24:17 VA.R. 2341	6/12/08
2 VAC 5-510-70	Repealed	24:17 VA.R. 2341	6/12/08
2 VAC 5-510-80	Repealed	24:17 VA.R. 2342	6/12/08
2 VAC 5-510-90	Amended	24:17 VA.R. 2342	6/12/08
2 VAC 5-510-100	Repealed	24:17 VA.R. 2344	6/12/08
2 VAC 5-510-110	Amended	24:17 VA.R. 2344	6/12/08
2 VAC 5-510-120	Repealed	24:17 VA.R. 2345	6/12/08
2 VAC 5-510-130	Amended	24:17 VA.R. 2345	6/12/08
2 VAC 5-510-140	Repealed	24:17 VA.R. 2347	6/12/08
2 VAC 5-510-150	Amended	24:17 VA.R. 2347	6/12/08
2 VAC 5-510-160	Repealed	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-170	Amended	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-180	Repealed	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-190	Amended	24:17 VA.R. 2348	6/12/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
2 VAC 5-510-200	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-210	Amended	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-220	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-230	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-240	Amended	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-250	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-260	Amended	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-270	Repealed	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-290	Amended	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-300	Repealed	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-310	Amended	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-320	Repealed	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-330	Amended	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-340	Repealed	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-350	Amended	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-360	Repealed	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-390	Amended	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-400	Repealed	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-410	Amended	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-420	Amended	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-500	Amended	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-510	Amended	24:17 VA.R. 2353	6/12/08
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 15-20-81	Amended	24:16 VA.R. 2242	4/14/08
2 VAC 20-10-80	Amended	24:24 VA.R. 3331	9/18/08
2 VAC 20-10-100	Amended	24:24 VA.R. 3331	9/18/08
2 VAC 20-10-110	Amended	24:24 VA.R. 3331	9/18/08
2 VAC 20-20-70	Amended	24:17 VA.R. 2355	6/12/08
2 VAC 20-20-130	Amended	24:17 VA.R. 2355	6/12/08
2 VAC 20-20-210	Amended	24:17 VA.R. 2355	6/12/08
2 VAC 20-40-50	Amended	24:17 VA.R. 2357	6/12/08
Title 3. Alcoholic Beverages			
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 5-50-10 through 4VAC5-50-170	Repealed	24:17 VA.R. 2357	5/28/08
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 15-40-30	Amended	24:23 VA.R. 3108	7/1/08
4 VAC 15-40-70	Amended	24:23 VA.R. 3108	7/1/08
4 VAC 15-40-190	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-40-210	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-40-220	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-50-20	Amended	24:23 VA.R. 3109	7/1/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 15-50-25	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-50-71	Amended	24:24 VA.R. 3332	7/8/08
4 VAC 15-50-81	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-50-91	Amended	24:23 VA.R. 3110	7/1/08
4 VAC 15-70-50	Amended	24:23 VA.R. 3111	7/1/08
4 VAC 15-70-70	Added	24:23 VA.R. 3111	7/1/08
4 VAC 15-90-22	Amended	24:23 VA.R. 3111	7/1/08
4 VAC 15-90-70	Amended	24:23 VA.R. 3112	7/1/08
4 VAC 15-90-80	Amended	24:23 VA.R. 3112	7/1/08
4 VAC 15-90-80	Amended	24:24 VA.R. 3332	7/8/08
4 VAC 15-90-90	Amended	24:23 VA.R. 3113	7/1/08
4 VAC 15-90-91	Amended	24:23 VA.R. 3114	7/1/08
4 VAC 15-110-10	Amended	24:23 VA.R. 3117	7/1/08
4 VAC 15-110-75	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-11	Added	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-20	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-31	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-40	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-50	Amended	24:23 VA.R. 3119	7/1/08
4 VAC 15-240-51	Added	24:23 VA.R. 3119	7/1/08
4 VAC 15-260-140	Amended	24:24 VA.R. 3333	7/8/08
4 VAC 15-270-50	Repealed	24:24 VA.R. 3334	7/8/08
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 15-410-10 through 4 VAC 15-410-160	Added	24:23 VA.R. 3119-3125	7/1/08
4 VAC 20-40-10 through 4 VAC 20-40-40	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-90-10	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-90-20	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-90-30	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-140-10	Amended	24:21 VA.R. 2917	3/17/09
4 VAC 20-140-20	Amended	24:21 VA.R. 2917	3/17/09
4 VAC 20-140-25	Added	24:21 VA.R. 2917	3/17/09
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 20-252-120	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

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-270-10 emer	Amended	24:19 VA.R. 2751	5/1/08-5/31/08
4 VAC 20-270-10	Amended	24:21 VA.R. 2918	6/1/08
4 VAC 20-270-30	Amended	24:19 VA.R. 2750	4/30/08
4 VAC 20-270-40	Amended	24:19 VA.R. 2750	4/30/08
4 VAC 20-270-50	Amended	24:19 VA.R. 2750	4/30/08
4 VAC 20-270-50 emer	Amended	24:19 VA.R. 2751	5/1/08-5/31/08
4 VAC 20-270-50	Amended	24:21 VA.R. 2918	6/1/08
4 VAC 20-270-55	Amended	24:15 VA.R. 2023	3/1/08
4 VAC 20-270-55	Amended	24:19 VA.R. 2751	4/30/08
4 VAC 20-270-56	Amended	24:19 VA.R. 2751	4/30/08
4 VAC 20-270-58	Added	24:19 VA.R. 2751	4/30/08
4 VAC 20-320-50	Amended	24:12 VA.R. 1456	2/1/08
4 VAC 20-450-30	Amended	24:21 VA.R. 2918	6/1/08
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
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 20-670-20	Amended	24:19 VA.R. 2752	4/30/08
4 VAC 20-670-25	Amended	24:19 VA.R. 2752	4/30/08
4 VAC 20-670-30	Amended	24:19 VA.R. 2752	4/30/08
4 VAC 20-670-40	Amended	24:19 VA.R. 2753	4/30/08
4 VAC 20-700-10 emer	Amended	24:19 VA.R. 2753	5/1/08-5/31/08
4 VAC 20-700-15 emer	Added	24:19 VA.R. 2753	5/1/08-5/31/08
4 VAC 20-700-15	Added	24:21 VA.R. 2918	6/1/08
4 VAC 20-700-20	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-700-20 emer	Amended	24:19 VA.R. 2754	5/1/08-5/31/08
4 VAC 20-700-20	Amended	24:21 VA.R. 2919	6/1/08
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 20-750-10	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-750-10	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-750-30	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-750-30	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-750-40	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-750-50	Repealed	24:19 VA.R. 2754	4/30/08
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 20-752-20	Amended	24:19 VA.R. 2754	4/30/08
4 VAC 20-752-30	Amended	24:16 VA.R. 2246	4/1/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-752-30	Amended	24:19 VA.R. 2755	4/30/08
4 VAC 20-880-10 emer	Amended	24:19 VA.R. 2755	5/1/08-5/31/08
4 VAC 20-880-10	Amended	24:21 VA.R. 2919	6/1/08
4 VAC 20-880-20 emer	Amended	24:19 VA.R. 2755	5/1/08-5/31/08
4 VAC 20-880-20	Amended	24:19 VA.R. 2756	4/30/08
4 VAC 20-880-30 emer	Amended	24:19 VA.R. 2757	5/1/08-5/31/08
4 VAC 20-880-30	Amended	24:19 VA.R. 2757	4/30/08
4 VAC 20-880-30	Amended	24:21 VA.R. 2919	6/1/08
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 20-1090-10 emer	Amended	24:19 VA.R. 2757	5/1/08-5/31/08
4 VAC 20-1090-30	Amended	24:8 VA.R. 965	12/1/07
4 VAC 20-1090-30 emer	Amended	24:19 VA.R. 2757	5/1/08-5/31/08
4 VAC 20-1090-30	Amended	24:19 VA.R. 2760	4/30/08
4 VAC 20-1090-30	Amended	24:21 VA.R. 2920	6/1/08
4 VAC 20-1130-10 through 4 VAC 20-1130-70	Added	24:8 VA.R. 968-970	12/1/07
4 VAC 20-1140-10	Added	24:19 VA.R. 2763	4/30/08
4 VAC 20-1140-20	Added	24:19 VA.R. 2763	4/30/08
4 VAC 20-1140-30	Added	24:19 VA.R. 2763	4/30/08
4 VAC 25-130 (Forms)	Amended	24:11 VA.R. 1424	--
4 VAC 25-150-90	Amended	24:17 VA.R. 2359	6/12/08
4 VAC 50-60-10	Amended	24:20 VA.R. 2842	7/9/08
4 VAC 50-60-1200	Amended	24:20 VA.R. 2852	7/9/08
4 VAC 50-60-1210	Amended	24:20 VA.R. 2853	7/9/08
4 VAC 50-60-1220	Amended	24:20 VA.R. 2854	7/9/08
4 VAC 50-60-1230	Amended	24:20 VA.R. 2854	7/9/08
4 VAC 50-60-1240	Amended	24:20 VA.R. 2856	7/9/08
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
Title 6. Criminal Justice and Corrections			
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 20-80-10 through 6 VAC 20-80-90	Amended	24:23 VA.R. 3127-3132	9/1/08
6 VAC 20-80-100	Repealed	24:23 VA.R. 3132	9/1/08
6 VAC 20-80-110	Repealed	24:23 VA.R. 3132	9/1/08
6 VAC 20-171-10 emer	Amended	24:23 VA.R. 3134	7/1/08 - 6/30/09
6 VAC 20-171-50 emer	Amended	24:23 VA.R. 3137	7/1/08 - 6/30/09
6 VAC 20-171-120 emer	Amended	24:23 VA.R. 3138	7/1/08 - 6/30/09
6 VAC 20-171-230 emer	Amended	24:23 VA.R. 3139	7/1/08 - 6/30/09

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6 VAC 20-171-320 emer	Amended	24:23 VA.R. 3141	7/1/08 - 6/30/09
6 VAC 20-171-350 emer	Amended	24:23 VA.R. 3142	7/1/08 - 6/30/09
6 VAC 20-171-360 emer	Amended	24:23 VA.R. 3145	7/1/08 - 6/30/09
6 VAC 20-250-10 through 6 VAC 20-250-380	Added	24:23 VA.R. 3146-3161	8/20/08
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 20-650-30	Amended	24:21 VA.R. 2936	9/15/08
Title 9. Environment			
9 VAC 10-20-120	Amended	24:22 VA.R. 3040	8/6/08
9 VAC 20-60-18	Amended	24:9 VA.R. 1106	2/6/08
9 VAC 25-32 (Forms)	Amended	24:13 VA.R. 1738	--
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 25-120-80	Amended	24:18 VA.R. 2502	6/11/08
9 VAC 25-193-40	Amended	24:18 VA.R. 2517	6/11/08
9 VAC 25-193-70	Amended	24:18 VA.R. 2517	6/11/08
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 25-196-70	Amended	24:18 VA.R. 2532	6/11/08
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 25-260-30	Amended	24:13 VA.R. 1741	*
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	24:18 VA.R. 2540	6/11/08

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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-720-120	Amended	24:21 VA.R. 2940	8/7/08
9 VAC 25-720-130	Amended	24:18 VA.R. 2548	6/11/08
9 VAC 25-820-10	Amended	24:21 VA.R. 2942	8/7/08
9 VAC 25-820-20	Amended	24:21 VA.R. 2944	8/7/08
9 VAC 25-820-70	Amended	24:21 VA.R. 2944	8/7/08
Title 10. Finance and Financial Institutions			
10 VAC 5-20-30	Amended	24:22 VA.R. 3043	6/23/08
10 VAC 5-40-5	Added	24:22 VA.R. 3045	7/1/08
10 VAC 5-40-60	Added	24:22 VA.R. 3045	7/1/08
Title 11. Gaming			
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 5-90-370	Added	24:19 VA.R. 2777	7/1/08
12 VAC 5-195-10 through 12 VAC 5-195-670	Added	24:19 VA.R. 2778-2802	5/26/08
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
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 5-481-10	Amended	24:18 VA.R. 2566	6/12/08
12 VAC 5-481-20	Amended	24:18 VA.R. 2592	6/12/08
12 VAC 5-481-30	Amended	24:18 VA.R. 2592	6/12/08
12 VAC 5-481-90	Amended	24:18 VA.R. 2592	6/12/08
12 VAC 5-481-100	Amended	24:18 VA.R. 2593	6/12/08

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12 VAC 5-481-110	Amended	24:18 VA.R. 2593	6/12/08
12 VAC 5-481-130	Amended	24:18 VA.R. 2594	6/12/08
12 VAC 5-481-150	Amended	24:18 VA.R. 2594	6/12/08
12 VAC 5-481-200	Repealed	24:18 VA.R. 2594	6/12/08
12 VAC 5-481-230 through 12 VAC 5-481-270	Amended	24:18 VA.R. 2594-2595	6/12/08
12 VAC 5-481-340	Amended	24:18 VA.R. 2595	6/12/08
12 VAC 5-481-370 through 12 VAC 5-481-450	Amended	24:18 VA.R. 2597-2607	6/12/08
12 VAC 5-481-460	Repealed	24:18 VA.R. 2607	6/12/08
12 VAC 5-481-470	Amended	24:18 VA.R. 2608	6/12/08
12 VAC 5-481-480	Amended	24:18 VA.R. 2610	6/12/08
12 VAC 5-481-500	Amended	24:18 VA.R. 2619	6/12/08
12 VAC 5-481-510	Amended	24:18 VA.R. 2620	6/12/08
12 VAC 5-481-530 through 12 VAC 5-481-590	Amended	24:18 VA.R. 2622-2626	6/12/08
12 VAC 5-481-571	Added	24:18 VA.R. 2624	6/12/08
12 VAC 5-481-630 through 12 VAC 5-481-760	Amended	24:18 VA.R. 2626-2629	6/12/08
12 VAC 5-481-780	Amended	24:18 VA.R. 2629	6/12/08
12 VAC 5-481-790	Amended	24:18 VA.R. 2629	6/12/08
12 VAC 5-481-800	Repealed	24:18 VA.R. 2629	6/12/08
12 VAC 5-481-810 through 12 VAC 5-481-910	Amended	24:18 VA.R. 2630-2631	6/12/08
12 VAC 5-481-930 through 12 VAC 5-481-1050	Amended	24:18 VA.R. 2632-2633	6/12/08
12 VAC 5-481-971	Added	24:18 VA.R. 2632	6/12/08
12 VAC 5-481-1070	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1090	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1100	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1110	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1130	Amended	24:18 VA.R. 2634	6/12/08
12 VAC 5-481-1151	Added	24:18 VA.R. 2634	6/12/08
12 VAC 5-481-1160	Repealed	24:18 VA.R. 2635	6/12/08
12 VAC 5-481-1161	Added	24:18 VA.R. 2635	6/12/08
12 VAC 5-481-1190	Amended	24:18 VA.R. 2637	6/12/08
12 VAC 5-481-1200	Amended	24:18 VA.R. 2638	6/12/08
12 VAC 5-481-1220 through 12 VAC 5-481-1250	Amended	24:18 VA.R. 2639-2640	6/12/08
12 VAC 5-481-1270	Amended	24:18 VA.R. 2640	6/12/08
12 VAC 5-481-1300	Amended	24:18 VA.R. 2640	6/12/08
12 VAC 5-481-1310	Amended	24:18 VA.R. 2641	6/12/08
12 VAC 5-481-1320	Amended	24:18 VA.R. 2641	6/12/08
12 VAC 5-481-1350	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1380	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1420	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1440	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1490	Amended	24:18 VA.R. 2645	6/12/08
12 VAC 5-481-1520	Amended	24:18 VA.R. 2645	6/12/08
12 VAC 5-481-1540	Repealed	24:18 VA.R. 2645	6/12/08
12 VAC 5-481-1550	Repealed	24:18 VA.R. 2646	6/12/08
12 VAC 5-481-1560	Amended	24:18 VA.R. 2646	6/12/08
12 VAC 5-481-1570	Amended	24:18 VA.R. 2647	6/12/08
12 VAC 5-481-1670 through 12 VAC 5-481-2040	Amended	24:18 VA.R. 2647-2650	6/12/08
12 VAC 5-481-2001	Added	24:18 VA.R. 2649	6/12/08
12 VAC 5-481-2050	Repealed	24:18 VA.R. 2650	6/12/08
12 VAC 5-481-2060	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2070	Amended	24:18 VA.R. 2651	6/12/08

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12 VAC 5-481-2080	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2100	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2230	Amended	24:18 VA.R. 2652	6/12/08
12 VAC 5-481-2240	Amended	24:18 VA.R. 2653	6/12/08
12 VAC 5-481-2260	Amended	24:18 VA.R. 2653	6/12/08
12 VAC 5-481-2270	Amended	24:18 VA.R. 2653	6/12/08
12 VAC 5-481-2280	Amended	24:18 VA.R. 2654	6/12/08
12 VAC 5-481-2330	Amended	24:18 VA.R. 2654	6/12/08
12 VAC 5-481-2420	Amended	24:18 VA.R. 2654	6/12/08
12 VAC 5-481-2430	Amended	24:18 VA.R. 2655	6/12/08
12 VAC 5-481-2470	Amended	24:18 VA.R. 2655	6/12/08
12 VAC 5-481-2490	Amended	24:18 VA.R. 2655	6/12/08
12 VAC 5-481-2510	Amended	24:18 VA.R. 2656	6/12/08
12 VAC 5-481-2530	Amended	24:18 VA.R. 2656	6/12/08
12 VAC 5-481-2540	Amended	24:18 VA.R. 2656	6/12/08
12 VAC 5-481-2550	Amended	24:18 VA.R. 2657	6/12/08
12 VAC 5-481-2571	Added	24:18 VA.R. 2657	6/12/08
12 VAC 5-481-2572	Added	24:18 VA.R. 2659	6/12/08
12 VAC 5-481-2573	Added	24:18 VA.R. 2660	6/12/08
12 VAC 5-481-2660 through 12 VAC 5-481-2950	Amended	24:18 VA.R. 2660-2661	6/12/08
12 VAC 5-481-2970	Amended	24:18 VA.R. 2661	6/12/08
12 VAC 5-481-2980	Amended	24:18 VA.R. 2662	6/12/08
12 VAC 5-481-3000 through 12 VAC 5-481-3040	Amended	24:18 VA.R. 2663-2665	6/12/08
12 VAC 5-481-3070 through 12 VAC 5-481-3140	Amended	24:18 VA.R. 2667-2670	6/12/08
12 VAC 5-481-3050	Repealed	24:18 VA.R. 2665	6/12/08
12 VAC 5-481-3051	Added	24:18 VA.R. 2666	6/12/08
12 VAC 5-481-3091	Added	24:18 VA.R. 2668	6/12/08
12 VAC 5-481-3151	Added	24:18 VA.R. 2670	6/12/08
12 VAC 5-481-3160	Amended	24:18 VA.R. 2671	6/12/08
12 VAC 5-481-3200 through 12 VAC 5-481-3270	Amended	24:18 VA.R. 2671-2675	6/12/08
12 VAC 5-481-3241	Added	24:18 VA.R. 2673	6/12/08
12 VAC 5-481-3261	Added	24:18 VA.R. 2674	6/12/08
12 VAC 5-481-3290	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3300	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3340	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3350	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3400	Amended	24:18 VA.R. 2676	6/12/08
12 VAC 5-481-3430	Amended	24:18 VA.R. 2677	6/12/08
12 VAC 5-481-3440	Amended	24:18 VA.R. 2683	6/12/08
12 VAC 5-481-3480	Amended	24:18 VA.R. 2684	6/12/08
12 VAC 5-481-3490	Amended	24:18 VA.R. 2684	6/12/08
12 VAC 5-481-3510	Amended	24:18 VA.R. 2684	6/12/08
12 VAC 5-481-3520	Amended	24:18 VA.R. 2685	6/12/08
12 VAC 5-481-3530	Amended	24:18 VA.R. 2685	6/12/08
12 VAC 5-481-3560	Amended	24:18 VA.R. 2686	6/12/08
12 VAC 5-481-3580	Amended	24:18 VA.R. 2687	6/12/08
12 VAC 5-481-3600	Amended	24:18 VA.R. 2687	6/12/08
12 VAC 5-481-3610	Amended	24:18 VA.R. 2688	6/12/08
12 VAC 5-481-3650	Amended	24:18 VA.R. 2688	6/12/08
12 VAC 5-481-3670 through 12 VAC 5-481-3780	Repealed	24:18 VA.R. 2689-2715	6/12/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-50-130 emer	Amended	24:23 VA.R. 3165	7/2/08 - 7/1/09
12 VAC 30-70-221	Amended	24:21 VA.R. 2959	7/23/08
12 VAC 30-80-30	Erratum	24:17 VA.R. 2473	--
12 VAC 30-80-30	Amended	24:21 VA.R. 2962	7/23/08
12 VAC 30-80-75	Added	24:21 VA.R. 2965	7/23/08
12 VAC 30-120-70 emer	Amended	24:23 VA.R. 3168	7/1/08 - 6/30/09
12 VAC 30-120-90 emer	Amended	24:23 VA.R. 3169	7/1/08 - 6/30/09
12 VAC 30-120-140 emer	Amended	24:23 VA.R. 3171	7/1/08 - 6/30/09
12 VAC 30-120-211 emer	Amended	24:23 VA.R. 3174	7/1/08 - 6/30/09
12 VAC 30-120-213 emer	Amended	24:23 VA.R. 3177	7/1/08 - 6/30/09
12 VAC 30-120-225 emer	Amended	24:23 VA.R. 3178	7/1/08 - 6/30/09
12 VAC 30-120-229 emer	Amended	24:23 VA.R. 3181	7/1/08 - 6/30/09
12 VAC 30-120-237 emer	Amended	24:23 VA.R. 3182	7/1/08 - 6/30/09
12 VAC 30-120-247 emer	Amended	24:23 VA.R. 3184	7/1/08 - 6/30/09
12 VAC 30-120-700 emer	Amended	24:23 VA.R. 3185	7/1/08 - 6/30/09
12 VAC 30-120-710 emer	Amended	24:23 VA.R. 3189	7/1/08 - 6/30/09
12 VAC 30-120-754 emer	Amended	24:23 VA.R. 3190	7/1/08 - 6/30/09
12 VAC 30-120-758 emer	Amended	24:23 VA.R. 3191	7/1/08 - 6/30/09
12 VAC 30-120-762 emer	Amended	24:23 VA.R. 3192	7/1/08 - 6/30/09
12 VAC 30-120-770 emer	Amended	24:23 VA.R. 3193	7/1/08 - 6/30/09
12 VAC 30-120-900 emer	Amended	24:23 VA.R. 3195	7/1/08 - 6/30/09
12 VAC 30-120-910 emer	Amended	24:23 VA.R. 3197	7/1/08 - 6/30/09
12 VAC 30-120-920 emer	Amended	24:23 VA.R. 3198	7/1/08 - 6/30/09
12 VAC 30-120-970 emer	Amended	24:23 VA.R. 3200	7/1/08 - 6/30/09
12 VAC 30-120-1500 emer	Amended	24:23 VA.R. 3202	7/1/08 - 6/30/09
12 VAC 30-120-1550 emer	Amended	24:23 VA.R. 3204	7/1/08 - 6/30/09
12 VAC 30-120-2000 emer	Added	24:23 VA.R. 3206	7/1/08 - 6/30/09
12 VAC 30-120-2010 emer	Added	24:23 VA.R. 3207	7/1/08 - 6/30/09
12 VAC 35-105-115	Added	24:11 VA.R. 1372	3/5/08
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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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
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 10-180-10	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 5-211-50	Amended	24:22 VA.R. 3063	7/1/08
14 VAC 5-211-90	Amended	24:22 VA.R. 3063	7/1/08
14 VAC 5-211-100	Amended	24:22 VA.R. 3063	7/1/08
14 VAC 5-215 (Forms)	Amended	24:17 VA.R. 2452	--
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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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
Title 15. Judicial			
15 VAC 5-80-50	Amended	24:23 VA.R. 3211	7/1/08
Title 16. Labor and Employment			
16 VAC 15-21-30	Amended	24:23 VA.R. 3213	8/21/08
16 VAC 15-30-190	Amended	24:23 VA.R. 3214	8/21/08
16 VAC 20-20-20	Amended	24:22 VA.R. 3065	8/7/08
16 VAC 20-20-40	Amended	24:22 VA.R. 3066	8/7/08
16 VAC 20-20-50	Amended	24:22 VA.R. 3068	8/7/08
16 VAC 20-20-60	Amended	24:22 VA.R. 3069	8/7/08
16 VAC 20-20-80	Amended	24:22 VA.R. 3070	8/7/08
16 VAC 20-20-110	Amended	24:22 VA.R. 3070	8/7/08
16 VAC 25-90-1910.6	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.68	Added	24:16 VA.R. 2262	6/1/08
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 25-100-1915.152	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 15-20-451	Amended	24:17 VA.R. 2455	8/1/08
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 60-20-30	Amended	24:20 VA.R. 2874	7/24/08
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 65-20-10	Amended	24:24 VA.R. 3358	9/3/08
18 VAC 65-20-15	Amended	24:24 VA.R. 3358	9/3/08
18 VAC 65-20-60	Amended	24:24 VA.R. 3358	9/3/08
18 VAC 65-20-120	Amended	24:24 VA.R. 3358	9/3/08
18 VAC 65-20-130	Amended	24:24 VA.R. 3359	9/3/08
18 VAC 65-20-151	Amended	24:22 VA.R. 3070	8/6/08
18 VAC 65-20-153	Amended	24:24 VA.R. 3359	9/3/08

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18 VAC 65-20-170	Amended	24:24 VA.R. 3359	9/3/08
18 VAC 65-20-171	Added	24:24 VA.R. 3359	9/3/08
18 VAC 65-20-240	Amended	24:24 VA.R. 3360	9/3/08
18 VAC 65-20-350	Amended	24:24 VA.R. 3360	9/3/08
18 VAC 65-20-420	Amended	24:24 VA.R. 3360	9/3/08
18 VAC 65-20-440	Amended	24:24 VA.R. 3360	9/3/08
18 VAC 65-20-500	Amended	24:24 VA.R. 3360	9/3/08
18 VAC 65-20-510	Amended	24:24 VA.R. 3361	9/3/08
18 VAC 65-20-590	Amended	24:24 VA.R. 3361	9/3/08
18 VAC 65-20-700	Amended	24:24 VA.R. 3361	9/3/08
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 85-20-225	Amended	24:24 VA.R. 3367	9/3/08
18 VAC 85-20-226	Added	24:11 VA.R. 1404	3/5/08
18 VAC 85-20-400	Amended	24:20 VA.R. 2876	7/24/08
18 VAC 85-40-35	Amended	24:11 VA.R. 1404	3/5/08
18 VAC 85-40-55	Amended	24:24 VA.R. 3368	9/3/08
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 85-50-59	Amended	24:24 VA.R. 3368	9/3/08
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 85-80-65	Amended	24:24 VA.R. 3368	9/3/08
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 85-101-25	Amended	24:20 VA.R. 2879	7/24/08
18 VAC 85-101-40	Amended	24:20 VA.R. 2879	7/24/08
18 VAC 85-101-50	Amended	24:20 VA.R. 2879	7/24/08
18 VAC 85-101-55	Added	24:20 VA.R. 2880	7/24/08
18 VAC 85-101-60	Amended	24:20 VA.R. 2880	7/24/08
18 VAC 85-101-70	Repealed	24:20 VA.R. 2881	7/24/08
18 VAC 85-101-145	Amended	24:24 VA.R. 3368	9/3/08
18 VAC 85-101-150	Amended	24:20 VA.R. 2881	7/24/08
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 85-110-145	Amended	24:24 VA.R. 3369	9/3/08
18 VAC 85-110-161	Added	24:11 VA.R. 1407	3/5/08
18 VAC 85-120-10	Amended	24:20 VA.R. 2884	7/24/08
18 VAC 85-120-50	Amended	24:20 VA.R. 2884	7/24/08
18 VAC 85-120-70	Amended	24:20 VA.R. 2885	7/24/08
18 VAC 85-120-85	Amended	24:24 VA.R. 3369	9/3/08
18 VAC 85-120-90	Amended	24:20 VA.R. 2885	7/24/08
18 VAC 85-120-95	Added	24:20 VA.R. 2885	7/24/08
18 VAC 85-120-150	Amended	24:20 VA.R. 2885	7/24/08
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 90-20-35	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

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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 90-20-230	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-271	Amended	24:21 VA.R. 2969	7/23/08
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 90-30-80	Erratum	24:18 VA.R. 2731-2732	--
18 VAC 90-30-80	Amended	24:24 VA.R. 3369	9/3/08
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 90-30-160	Amended	24:24 VA.R. 3370	9/3/08
18 VAC 90-60-110	Amended	24:23 VA.R. 3216	9/4/08
18 VAC 95-20-80	Amended	24:16 VA.R. 2264	5/14/08
18 VAC 95-20-175	Amended	24:20 VA.R. 2887	7/24/08
18 VAC 95-20-220	Amended	24:20 VA.R. 2888	7/24/08
18 VAC 95-20-230	Amended	24:20 VA.R. 2888	7/24/08
18 VAC 95-30-40	Amended	24:16 VA.R. 2264	5/14/08
18 VAC 95-30-95	Amended	24:23 VA.R. 3219	9/4/08
18 VAC 95-30-150	Amended	24:23 VA.R. 3220	9/4/08
18 VAC 95-30-180	Amended	24:23 VA.R. 3220	9/4/08
18 VAC 105-20-75	Amended	24:22 VA.R. 3071	8/6/08
18 VAC 110-20-10	Amended	24:8 VA.R. 983	1/23/08
18 VAC 110-20-75	Amended	24:22 VA.R. 3071	8/6/08
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 110-50-10	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 115-20-10	Amended	24:24 VA.R. 3387	9/3/08
18 VAC 115-20-45	Amended	24:24 VA.R. 3387	9/3/08
18 VAC 115-20-49	Amended	24:24 VA.R. 3388	9/3/08
18 VAC 115-20-51	Amended	24:24 VA.R. 3388	9/3/08
18 VAC 115-20-52	Amended	24:24 VA.R. 3388	9/3/08
18 VAC 115-20-120	Repealed	24:24 VA.R. 3390	9/3/08
18 VAC 115-30-150	Amended	24:14 VA.R. 1953	4/16/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 115-30-160	Amended	24:14 VA.R. 1953	4/16/08
18 VAC 115-50-10	Amended	24:24 VA.R. 3390	9/3/08
18 VAC 115-50-40	Amended	24:24 VA.R. 3390	9/3/08
18 VAC 115-50-55	Amended	24:24 VA.R. 3391	9/3/08
18 VAC 115-50-60	Amended	24:24 VA.R. 3391	9/3/08
18 VAC 115-60-10	Amended	24:24 VA.R. 3392	9/3/08
18 VAC 115-60-50	Amended	24:24 VA.R. 3393	9/3/08
18 VAC 115-60-70	Amended	24:24 VA.R. 3393	9/3/08
18 VAC 115-60-80	Amended	24:24 VA.R. 3394	9/3/08
18 VAC 125-20-170	Amended	24:12 VA.R. 1471	3/19/08
18 VAC 125-30-120	Amended	24:12 VA.R. 1471	3/19/08
18 VAC 130-20-10	Amended	24:23 VA.R. 3225	9/1/08
18 VAC 130-20-70	Amended	24:23 VA.R. 3229	9/1/08
18 VAC 130-20-180	Amended	24:23 VA.R. 3229	9/1/08
18 VAC 130-20-200	Amended	24:23 VA.R. 3231	9/1/08
18 VAC 130-20-230	Amended	24:23 VA.R. 3231	9/1/08
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 135-60-60	Amended	24:9 VA.R. 1230	3/1/08
18 VAC 140-20-50	Amended	24:23 VA.R. 3234	9/4/08
18 VAC 140-20-70	Amended	24:23 VA.R. 3235	9/4/08
18 VAC 140-20-105	Amended	24:20 VA.R. 2890	7/24/08
18 VAC 150-20-135	Amended	24:21 VA.R. 2969	7/23/08
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

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
19 VAC 30-70-110 through 19 VAC 30-70-660	Amended	24:8 VA.R. 1001-1070	3/1/08
19 VAC 30-190-10 through 19 VAC 30-190-140	Added	24:11 VA.R. 1421-1423	3/6/08
Title 21. Securities and Retail Franchising			
21 VAC 5-20-280	Amended	24:21 VA.R. 2971	7/1/08
21 VAC 5-80-10	Amended	24:21 VA.R. 2976	7/1/08
21 VAC 5-80-200	Amended	24:21 VA.R. 2977	7/1/08
21 VAC 5-110-10	Amended	24:21 VA.R. 2983	7/1/08
21 VAC 5-110-20	Amended	24:21 VA.R. 2984	7/1/08
21 VAC 5-110-30	Amended	24:21 VA.R. 2984	7/1/08
21 VAC 5-110-40	Amended	24:21 VA.R. 2984	7/1/08
21 VAC 5-110-50	Amended	24:21 VA.R. 2985	7/1/08
21 VAC 5-110-55	Added	24:21 VA.R. 2985	7/1/08
21 VAC 5-110-60	Amended	24:21 VA.R. 2986	7/1/08
21 VAC 5-110-65	Amended	24:21 VA.R. 2987	7/1/08
21 VAC 5-110-70	Amended	24:21 VA.R. 2988	7/1/08
21 VAC 5-110-75	Amended	24:21 VA.R. 2988	7/1/08
21 VAC 5-110-80	Amended	24:21 VA.R. 2989	7/1/08
21 VAC 5-110-90	Repealed	24:21 VA.R. 2992	7/1/08
21 VAC 5-110-95	Added	24:21 VA.R. 2992	7/1/08
Title 22. Social Services			
22 VAC 15-30-310	Amended	24:10 VA.R. 1295	3/6/08
22 VAC 30-10-10	Amended	24:22 VA.R. 3076	8/8/08
22 VAC 30-10-20	Amended	24:22 VA.R. 3077	8/8/08
22 VAC 30-10-40	Amended	24:22 VA.R. 3077	8/8/08
22 VAC 30-10-50	Amended	24:22 VA.R. 3077	8/8/08
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 40-690-20	Amended	24:24 VA.R. 3420	10/1/08
22 VAC 40-690-30	Amended	24:24 VA.R. 3420	10/1/08
22 VAC 40-690-40	Amended	24:24 VA.R. 3421	10/1/08
22 VAC 40-690-55	Amended	24:24 VA.R. 3421	10/1/08
22 VAC 40-690-65	Amended	24:24 VA.R. 3421	10/1/08
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
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 10-210-693	Amended	24:23 VA.R. 3240	10/6/08
23 VAC 10-500-10 through 23 VAC 10-500-820	Added	24:23 VA.R. 3253-3289	10/6/08
Title 24. Transportation and Motor Vehicles			
24 VAC 30-72-10 through 24 VAC 30-72-170	Added	24:17 VA.R. 2458-2466	7/1/08
24 VAC 30-72-30	Erratum	24:18 VA.R. 2732	--
24 VAC 30-155-10	Amended	24:23 VA.R. 3290	7/1/08
24 VAC 30-155-40	Amended	24:23 VA.R. 3291	7/1/08
24 VAC 30-155-50	Amended	24:23 VA.R. 3292	7/1/08
24 VAC 30-155-60	Amended	24:23 VA.R. 3294	7/1/08
24 VAC 30-155-70	Amended	24:23 VA.R. 3303	7/1/08
24 VAC 30-155-80	Amended	24:23 VA.R. 3303	7/1/08

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF SOCIAL WORK

Agency Decision

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

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

Name of Petitioner: Mary Jaquelin Simons, MSW.

Nature of Petitioner's Request: To amend regulations to clarify that the requirement for face-to-face client contact for supervised experience in clinical social work means an average of no less than 15 hours per week or the equivalent in part-time service.

Agency's Decision: Request denied.

Statement of Reasons for Decision: The board recommended that the petition be denied because it has recently amended regulations to clarify that the supervised experience may be completed in no less than two years and no more than four years with an average of no less than 15 hours per week in face-to-face client contact for a minimum of 1,380 hours. The amended regulation will become effective September 4, 2008.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4441, FAX (804) 527-4435, or email evelyn.brown@dhp.virginia.gov.

VA.R. Doc. No. R08-11; Filed July 18, 2008, 3:33 p.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending the following regulations: **12VAC30-80, Methods and Standards for Establishing Payment Rate; Other Types of Care.** The purpose of the proposed action is to help contain the costs of complex and expensive drugs. Specialty pharmaceuticals represent the fastest growing segment of the prescription drug market in the U.S. Industry projections have the growth rate at 20% per year. Typically, these products are used to treat chronic and/or rare diseases, are high cost, and can be administered by injection, infusion inhalation, or orally. DMAS is promulgating this regulation in an effort to help contain the costs of these complex and expensive drugs.

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

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

Public Comments: Public comments may be submitted until 5 p.m. on September 17, 2008.

Agency Contact: Rachel Cain, Health Care Services Division - Pharmacy, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0918, FAX (804) 786-1680, or email rachel.cain@dmass.virginia.gov.

VA.R. Doc. No. R08-1319; Filed August 4, 2008, 3:18 p.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 1. ADMINISTRATION

DEPARTMENT OF GENERAL SERVICES

Final Regulation

Titles of Regulations: **1VAC30-45. Certification for Noncommercial Environmental Laboratories (adding 1VAC30-45-10 through 1VAC30-45-860).**

1VAC30-46. Accreditation for Commercial Environmental Laboratories (adding 1VAC30-46-10 through 1VAC30-46-210).

Statutory Authority: §2.2-1105 of the Code of Virginia.

Effective Date: October 1, 2008.

Agency Contact: Nancy S. Saylor, Consultant to the Division of Consolidated Laboratory Services, Department of General Services, 600 North 5th Street, Richmond, VA 23219, telephone (804) 231-7980, FAX (804) 231-7980 or email nssaylor@erols.com.

Summary:

The regulations establish the certification program required by §2.2-1105 of the Code of Virginia for environmental laboratories submitting data to the Department of Environmental Quality under the state's air, water and waste laws. There are two regulations, one for noncommercial environmental laboratories (1VAC30-45) and one for commercial environmental laboratories (1VAC30-46). Each regulation is organized into two parts. Part I of each regulation contains the provisions pertaining to the administration of the program. This part describes the process that owners or operators of environmental laboratories must use to be certified and to maintain certification under the program. Part II of each regulation contains the quality assurance and quality control standards that environmental laboratories must meet to be certified under the program. The standards in Part II of Chapter 45 have been developed for Virginia noncommercial environmental laboratories. The standards in Part II of Chapter 46 are the 2002 National Environmental Laboratory Accreditation Conference standards, which are incorporated by reference into the regulation.

Substantive changes since the proposed are as follows:

- 1. In Chapter 45, added specific quality control requirements for different types of testing (in lieu of generic requirements);*
- 2. In Chapters 45 and 46, revised the fees;*
- 3. In Chapter 45, substituted matrix, technology/method, and analyte/analyte group in the definition of field of testing for program, method and analyte;*
- 4. In Chapter 46, limited certification to 12 months instead of 24 months;*
- 5. In Chapter 46, substituted the 2003 NELAC standards for the 2002 NELAC standards; and*
- 6. Added one year to the establishment of the program (when laboratories must be certified to submit data to DEQ).*

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

CHAPTER 45

CERTIFICATION FOR NONCOMMERCIAL ENVIRONMENTAL LABORATORIES

Part I

General Provisions

1VAC30-45-10. Purpose.

Section 2.2-1105 of the Code of Virginia directs the Division of Consolidated Laboratory Services to establish a program to certify environmental laboratories that perform tests, analyses, measurements or monitoring required [by pursuant to] the Commonwealth's air, waste and water laws and regulations. This chapter sets out the required standards and the process by which owners [or operators] of noncommercial environmental laboratories may obtain certification for their laboratories. 1VAC30-46 covers commercial environmental laboratories and [NELAC-accredited NELAP-accredited] environmental laboratories [located outside seeking reciprocal accreditation in] Virginia.

1VAC30-45-20. Establishment of certification program.

A. Once the certification program has been established, laboratory certification shall be required before any environmental analyses performed by a noncommercial environmental laboratory may be used for the purposes of the Virginia Air Pollution Control Law, the Virginia Waste

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Management Act or the State Water Control Law (§10.1-1300 et seq., §10.1-1400 et seq., and §62.1-44.2 et seq., respectively of the Code of Virginia).

B. The certification program shall be established on ~~[the first day of the 25th month following the effective date of this chapter~~ October 1, 2011].

1VAC30-45-30. Applicability.

A. This chapter applies to any owner ~~[or operator]~~ of a noncommercial environmental laboratory.

B. Any environmental laboratory owned by an agency of the federal government may be certified as follows:

1. ~~[By]~~ DGS-DCLS to the standards set out in this chapter, or
2. ~~[A By a]~~ federal primary accrediting authority to the standards established by the National Environmental Laboratory Accreditation Conference.

1VAC30-45-40. Definitions.

[Where a term is defined in this section, the term shall have no other meaning, even if it is defined differently in the Code of Virginia or another regulation of the Virginia Administrative Code. Unless specifically defined in this section, the terms used in this chapter shall have the meanings commonly ascribed to them by recognized authorities.]

"Acceptance criteria" means specified limits placed on characteristics of an item, process, or service defined in requirement documents.

"Accuracy" means the degree of agreement between an observed value and an accepted reference value. Accuracy includes a combination of random error (precision) and systematic error (bias) components that are due to sampling and analytical operations. Accuracy is an indicator of data quality.

["Algae" means simple single-celled, colonial, or multicelled, mostly aquatic plants, containing chlorophyll and lacking roots, stems and leaves that are either suspended in water (phytoplankton) or attached to rocks and other substrates (periphyton).]

"Aliquot" means ~~[something that is contained an exact number of times in another, such as aliquot samples for testing or analysis a portion of a sample taken for analysis]~~.

"Analyte" means the substance or physical property to be determined in samples examined.

~~["Analytical batch" means a batch composed of prepared environmental samples (extracts, digestates or concentrates) that are analyzed together as a group. An analytical batch can include prepared samples originating from various environmental matrices and can exceed 20 samples.]~~

"Analytical method" means a technical procedure for providing analysis of a sample, defined by a body such as the Environmental Protection Agency or the American Society for Testing and Materials, that may not include the sample preparation method.

"Assessment" means the evaluation process used to measure or establish the performance, effectiveness, and conformance of an organization and its systems or both to defined criteria.

"Assessor" means the person who performs on-site assessments of laboratories' capability and capacity for meeting the requirements under this chapter by examining the records and other physical evidence for each one of the tests for which certification has been requested.

"Audit" means a systematic evaluation to determine the conformance to quantitative and qualitative specifications of some operational function or activity.

"Authority" means, in the context of a governmental body or local government, an authority created under the provisions of the Virginia Water and Waste Authorities Act, Chapter 51 (§15.2-5100 et seq.) of Title 15.2 of the Code of Virginia.

"Batch" means environmental samples that are prepared together or analyzed together or both with the same process and personnel, using the same lot or lots of reagents. ~~[See "analytical batch."]~~ "Analytical batch" means a batch composed of prepared environmental samples (extracts, digestates or concentrates) that are analyzed together as a group. An analytical batch can include prepared samples originating from various environmental matrices and can exceed 20 samples. "Preparation batch" means a batch composed of one to 20 environmental samples of the same matrix that meets the criteria in this definition for "batch" and with a maximum time between the start of processing of the first and last sample in the batch to be 24 hours.

"Benthic macroinvertebrates" means bottom dwelling animals without backbones that live at least part of their life cycles within or upon available substrates within a body of water.]

"Blank" means a sample that has not been exposed to the analyzed sample stream in order to monitor contamination during sampling, transport, storage or analysis. The blank is subjected to the usual analytical and measurement process to establish a zero baseline or background value [and is sometimes used to adjust or correct routine analytical results. Blanks include the following types:

1. Field blank. A blank prepared in the field by filling a clean container with pure deionized water and appropriate preservative, if any, for the specific sampling activity being undertaken.
2. Method blank. A sample of a matrix similar to the batch of associated samples (when available) that is free from the analytes of interest and is processed simultaneously with

and under the same conditions as samples through all steps of the analytical procedures, and in which no target analytes or interferences are present at concentrations that impact the analytical results for sample analyses].

"Calibration" means to determine, by measurement or comparison with a standard, the correct value of each scale reading on a meter, instrument or other device. The levels of the applied calibration standard should bracket the range of planned or expected sample measurements.

"Calibration curve" means the graphical relationship between the known values, such as concentrations, of a series of calibration standards and their instrument response.

"Calibration standard" means a substance or reference material used to calibrate an instrument.

["Certified reference material" means a reference material one or more of whose property values are certified by a technically valid procedure, accompanied by or traceable to a certificate or other documentation that is issued by a certifying body.]

"Commercial environmental laboratory" means an environmental laboratory where environmental analysis is performed for another person.

"Corrective action" means the action taken to eliminate the causes of an existing nonconformity, defect or other undesirable situation in order to prevent recurrence.

"DGS-DCLS" means the Division of Consolidated Laboratory Services of the Department of General Services.

"Demonstration of capability" means the procedure to establish the ability of the analyst to generate data of acceptable accuracy and precision.

"Detection limit" means the lowest concentration or amount of the target analyte that can be determined to be different from zero by a single measurement at a stated degree of confidence.

"Environmental analysis" or "environmental analyses" means any test, analysis, measurement, or monitoring used for the purposes of the Virginia Air Pollution Control Law, the Virginia Waste Management Act or the State Water Control Law (§10.1-1300 et seq., §10.1-1400 et seq., and §62.1-44.2 et seq., respectively, of the Code of Virginia). For the purposes of these regulations, any test, analysis, measurement, or monitoring required [~~by~~ pursuant to] the regulations promulgated under these three laws, or by any permit or order issued under the authority of any of these laws or regulations is "used for the purposes" of these laws. The term shall not include the following:

1. Sampling of [~~air, water or waste~~ water, solid and chemical materials, biological tissue, or air and emissions].

2. Field testing and measurement of [~~air, water or waste~~ water, solid and chemical materials, biological tissue, or air and emissions], except when performed in an environmental laboratory rather than at the site where the sample was taken.

[3. Taxonomic identification of samples for which there is no national accreditation standard such as algae, benthic macroinvertebrates, macrophytes, vertebrates and zooplankton.]

"Environmental laboratory" or "laboratory" means a facility or a defined area within a facility where environmental analysis is performed. [A structure built solely to shelter field personnel and equipment from inclement weather shall not be considered an environmental laboratory.]

"Establishment date" means the date set for the accreditation program under 1VAC30-46 and the certification program to be established under this chapter.

"Establishment of certification program" or "established program" means that DGS-DCLS has completed the initial accreditation of environmental laboratories covered by 1VAC30-46 and the initial certification of environmental laboratories covered by 1VAC30-45.

"Facility" means something that is built or installed to serve a particular function.

"Field of [~~testing~~ certification"] means an approach to certifying laboratories by [~~program~~ matrix], [~~method~~ technology/method] and [~~analyte~~ analyte/analyte group].

"Field testing and measurement" means any of the following:

1. Any test for parameters under 40 CFR Part 136 for which the holding time indicated for the sample requires immediate analysis; or
2. Any test defined as a field test in federal regulation.

The following is a limited list of currently recognized field tests or measures that is not intended to be inclusive: continuous emissions monitoring; on-line monitoring; flow monitoring; tests for pH, residual chlorine, temperature and dissolved oxygen; and field analysis for soil gas.

"Finding" means an assessment conclusion that identifies a condition having a significant effect on an item or activity. An assessment finding is normally a deficiency and is normally accompanied by specific examples of the observed condition.

"Governmental body" means any department, agency, bureau, authority, or district of the United States government, of the government of the Commonwealth of Virginia, or of any local government within the Commonwealth of Virginia.

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"Holding time (or maximum allowable holding time)" means the maximum time that a sample may be held prior to analysis and still be considered valid or not compromised.

"Initial certification period" means the period during which DGS-DCLS is accepting and processing applications for the first time under this chapter as specified in 1VAC30-45-60.

["International System of Units (SI)" means the coherent system of units adopted and recommended by the General Conference on Weights and Measures.

"Laboratory control sample" or "LCS" means a sample matrix, free from the analytes of interest, spiked with verified known amounts of analytes or a material containing known and verified amounts of analytes. It is generally used to establish intra-laboratory or analyst specific precision and bias or to assess the performance of all or a portion of the measurement system. "Laboratory control sample" or "LCS" may also be named laboratory fortified blank, spiked blank, or QC check sample.]

"Laboratory manager" means the person who has overall responsibility for the technical operation of the environmental laboratory and who exercises actual day-to-day supervision of laboratory operation for the appropriate fields of testing and reporting of results. The title of this person may include but is not limited to laboratory director, technical director, laboratory supervisor or laboratory manager.

"Legal entity" means an entity, other than a natural person, who has sufficient existence in legal contemplation that it can function legally, be sued or sue and make decisions through agents as in the case of corporations.

["Limit of detection" or "LOD" means an estimate of the minimum amount of a substance that an analytical process can reliably detect. An LOD is analyte and matrix specific and may be laboratory dependent.

"Limit of quantitation" or "LOQ" means the minimum levels, concentrations, or quantities of a target variable (e.g., target analyte) that can be reported with a specified degree of confidence.]

"Local government" means a municipality (city or town), county, sanitation district, or authority.

["Macrophytes" means any aquatic or terrestrial plant species that can be identified and observed with the eye, unaided by magnification.]

"Matrix" means the component or substrate that may contain the analyte of interest. [~~For purposes of batch and quality control requirement determinations, the following matrix types shall be used:~~ A matrix can be a field of certification matrix or a quality system matrix.]

1. [~~Drinking~~ Field of certification matrix. These matrix definitions shall be used when certifying a laboratory.

a. ~~Nonpotable] water. Any aqueous sample that has [not] been designated a potable or potential potable water source. [2. Nonpotable water. Any aqueous sample excluded from the definition of drinking water matrix.] Includes surface water, groundwater, effluents, water treatment chemicals, and TCLP or other extracts.~~

[~~3. b.] Solid and chemical materials. Includes soils, sediments, sludges, products and byproducts of an industrial process that results in a matrix not previously defined.~~

[~~4. c.] Biological tissue. Any sample of a biological origin such as fish tissue, shellfish, or plant material. Such samples shall be grouped according to origin [i.e., by species] .~~

[~~5. d.] Air and emissions. Whole gas or vapor samples including those contained in flexible or rigid wall containers and the extracted concentrated analytes of interest from a gas or vapor that are collected with a sorbent tube, impinger solution, filter or other device.~~

[2. Quality system matrix. For purposes of batch and quality control requirement determinations, the following matrix types shall be used:

a. Drinking water. Any aqueous sample that has been designated a potable or potential potable water source.

b. Aqueous. Any aqueous sample excluded from the definition of drinking water matrix or saline/estuarine source. Includes surface water, groundwater, effluents, and TCLP or other extracts.

c. Saline/estuarine. Any aqueous sample from an ocean or estuary, or other salt water source.

[d. Nonaqueous liquid. Any organic liquid with less than 15% settleable solids.]

e. Biological tissue. Any sample of a biological origin such as fish tissue, shellfish, or plant material. Such samples shall be grouped according to origin.

f. Solids. Includes soils, sediments, sludges and other matrices with more than 15% settleable solids.

g. Chemical waste. A product or by-product of an industrial process that results in a matrix not previously defined.

h. Air and emissions. Whole gas or vapor samples including those contained in flexible or rigid wall containers and the extracted concentrated analytes of interest from a gas or vapor that are collected with a sorbent tube, impinger solution, filter or other device.

["Matrix spike (spiked sample or fortified sample)" means a sample prepared by adding a known mass of target analyte to a specified amount of matrix sample for which an independent estimate of target analyte concentration is

available. Matrix spikes are used, for example, to determine the effect of the matrix on a method's recovery efficiency.

"Matrix spike duplicate (spiked sample or fortified sample duplicate)" means a second replicate matrix spike prepared in the laboratory and analyzed to obtain a measure of the precision of the recovery for each analyte.]

"National Environmental Laboratory Accreditation Conference (NELAC)" means a voluntary organization of state and federal environmental officials and interest groups with the primary purpose to establish mutually acceptable standards for accrediting environmental laboratories. A subset of NELAP.

"National Environmental Laboratory Accreditation Program (NELAP)" means the overall National Environmental Laboratory Accreditation Program of which NELAC is a part.

"National Institute of Standards and Technology" or "NIST" means an agency of the U.S. Department of Commerce's Technology Administration that is working with EPA, states, NELAC, and other public and commercial entities to establish a system under which private sector companies and interested states can be certified by NIST to provide NIST-traceable proficiency testing (PT) samples [~~to those laboratories testing drinking water and wastewater~~].

"Negative control" means measures taken to ensure that a test, its components, or the environment do not cause undesired effects, or produce incorrect test results.

"Noncommercial environmental laboratory" means either of the following:

1. An environmental laboratory where environmental analysis is performed solely for the owner of the laboratory.
2. An environmental laboratory where the only performance of environmental analysis for another person is one of the following:
 - a. Environmental analysis performed by an environmental laboratory owned by a local government for an owner [~~or operator~~] of a small [~~sewage wastewater~~] treatment [~~plant~~ system] treating domestic sewage at a flow rate of less than or equal to 1,000 gallons per day.
 - b. Environmental analysis performed by an environmental laboratory operated by a corporation as part of a general contract issued by a local government to operate and maintain a [~~sewage wastewater~~] treatment [~~facility~~ system] or a waterworks.
 - c. Environmental analysis performed by an environmental laboratory owned by a corporation as part of the prequalification process [~~for~~ or to confirm the identity or characteristics of material supplied by] a

potential [or existing] customer [or generator] as required by a hazardous waste management permit under 9VAC20-60.

d. Environmental analysis performed by an environmental laboratory owned by a Publicly Owned Treatment Works (POTW) for an industrial source of wastewater under a permit issued by the POTW to the industrial source as part of the requirements of a pretreatment program under Part VII (9VAC25-31-730 et seq.) of 9VAC25-31.

e. Environmental analysis performed by an environmental laboratory owned by a county authority for any municipality within the county's geographic jurisdiction when the environmental analysis pertains solely to the purpose for which the authority was created.

f. Environmental analysis performed by an environmental laboratory owned by an authority or a sanitation district for any participating local government of the authority or sanitation district when the environmental analysis pertains solely to the purpose for which the authority or sanitation district was created.

"Owner" [or "~~operator~~"] means any person who owns [~~or~~] operates [, leases or controls] an environmental laboratory.

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

"Physical," for the purposes of fee test categories, means the tests to determine the physical properties of a sample. Tests for solids, turbidity and color are examples of physical tests.

"Positive control" means measures taken to ensure that a test or its components are working properly and producing correct or expected results from positive test subjects.

"Precision" means the degree to which a set of observations or measurements of the same property, obtained under similar conditions, conform to themselves. Precision is an indicator of data quality. Precision is expressed usually as standard deviation, variance or range, in either absolute or relative terms.

"Primary accrediting authority" means the agency or department designated at the territory, state or federal level as the recognized authority with the responsibility and accountability for granting NELAC accreditation to a specific laboratory for a specific field of accreditation.

"Proficiency test or testing (PT)" means evaluating a laboratory's performance under controlled conditions relative to a given set of criteria through analysis of unknown samples provided by an external source.

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"Proficiency test (PT) field of testing" means the approach to offer proficiency testing by [~~regulatory or environmental program, matrix type, and analyte matrix, technology/method, and analyte/analyte group~~].

"Proficiency test (PT) sample" means a sample, the composition of which is unknown to [both] the analyst [and the laboratory], provided to test whether the analyst or laboratory or both can produce analytical results within specified acceptance criteria.

"Proficiency testing (PT) program" means the aggregate of providing rigorously controlled and standardized environmental samples to a laboratory for analysis, reporting of results, statistical evaluation of the results and the collective demographics and results summary of all participating laboratories.

"Program," in the context of [~~field testing or a~~] regulatory program, means the relevant U.S. Environmental Protection Agency program such as the water program under the Clean Water Act (CWA), the air program under the Clean Air Act (CAA), the waste program under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) or the waste program under the Resource Conservation and Recovery Act (RCRA).

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

"Quality assurance" means an integrated system of activities involving planning, quality control, quality assessment, reporting and quality improvement to ensure that a product or service meets defined standards of quality with a stated level of confidence.

"Quality assurance officer" means the person who has responsibility for the quality system and its implementation. Where staffing is limited, the quality assurance officer may also be the [~~technical director~~ laboratory manager].

"Quality control" means the overall system of technical activities whose purpose is to measure and control the quality of a product or service so that it meets the needs of users.

"Quality manual" means a document stating the management policies, objectives, principles, organizational structure and authority, responsibilities, accountability, and implementation of an agency, organization, or laboratory, to

ensure the quality of its product and the utility of its product to its users.

"Quality system" means a structured and documented management system describing the policies, objectives, principles, organizational authority, responsibilities, accountability, and implementation plan of an organization for ensuring quality in its work processes, products (items), and services. The quality system provides the framework for planning, implementing, and assessing work performed by the organization and for carrying out required quality assurance and quality control.

"Range" means the difference between the minimum and maximum of a set of values.

"Reference material" means a material or substance one or more properties of which are sufficiently well established to be used for the calibration of an apparatus, the assessment of a measurement test method, or for assigning values to materials.

["Reference standard" means a standard, generally of the highest metrological quality available at a given location, from which measurements made at that location are derived.]

"Responsible official" means one of the following, as appropriate:

1. If the laboratory is owned or operated by a private corporation, "responsible official" means (i) a president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated in accordance with corporate procedures.
2. If the laboratory is owned or operated by a partnership, association, or a sole proprietor, "responsible official" means a general partner, officer of the association, or the proprietor, respectively.
3. If the laboratory is owned or operated by a governmental body, "responsible official" means a director or highest official appointed or designated to oversee the operation and performance of the activities of the environmental laboratory.
4. Any person designated as the responsible official by an individual described in subdivision 1, 2 or 3 of this definition, provided the designation is in writing, the designation specifies an individual or position with responsibility for the overall operation of the environmental laboratory, and the designation is submitted to DGS-DCLS.

"Sampling" means the act of collection for the purpose of analysis.

"Sanitation district" means a sanitation district created under the provisions of Chapters 3 (§21-141 et seq.) through 5 (§21-291 et seq.) of Title 21 of the Code of Virginia.

"Sewage" means the water-carried human wastes from residences, buildings, industrial establishments or other places together with such industrial wastes and underground, surface, storm, or other water as may be present.

"Simple test procedures" means any of the following:

1. Field testing and measurement performed in an environmental laboratory.
2. The test procedures to determine:
 - a. Biochemical oxygen demand (BOD),
 - b. Fecal coliform,
 - c. Total coliform,
 - d. Fecal streptococci,
 - e. [E. coli,
 - f. Enterococci,
 - g.] Settleable solids (SS),
 - [~~f~~. h.] Total dissolved solids (TDS),
 - [~~g~~. i.] Total solids (TS),
 - [~~h~~. j.] Total suspended solids (TSS),
 - [~~i~~. k.] Total volatile solids (TVS), and
 - [~~j~~. l.] Total volatile suspended solids (TVSS).

"Standard operating procedure (SOP)" means a written document that details the method of an operation, analysis or action whose techniques and procedures are thoroughly prescribed and which is accepted as the method for performing certain routine or repetitive tasks.

[Standardized reference material (SRM)" means a certified reference material produced by the U.S. National Institute of Standards and Technology or other equivalent organization and characterized for absolute content, independent of analytical method.

"System laboratory" means a noncommercial laboratory that analyzes samples from multiple facilities having the same owner.]

"TCLP" or "toxicity characteristic leachate procedure" means Test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11. This method is used to determine whether a solid waste exhibits the characteristic of toxicity (see 40 CFR 261.24).

"Test" means a technical operation that consists of the determination of one or more characteristics or performance of a given product, material, equipment, organism, physical phenomenon, process or service according to a specified procedure.

"Test, analysis, measurement or monitoring required [by pursuant to] the Virginia Air Pollution Control Law" means any method of analysis required by the Virginia Air Pollution Control Law (§10.1-1300 et seq.); by the regulations promulgated under this law (9VAC5) [~~;~~] including any method of analysis listed either in the definition of "reference method" in 9VAC5-10-20, or listed or adopted by reference in [~~9VAC5 30, 9VAC5 40, 9VAC5 50 or 9VAC5 60~~ 9VAC5] ; or by any permit or order issued under and in accordance with this law and these regulations.

"Test, analysis, measurement or monitoring required [by pursuant to] the Virginia Waste Management Act" means any method of analysis required by the Virginia Waste Management Act (§10.1-1400 et seq.); by the regulations promulgated under this law (9VAC20), including any method of analysis listed or adopted by reference in [~~9VAC20 60, 9VAC20 80, 9VAC20 101, or 9VAC20 120~~ 9VAC20] ; or by any permit or order issued under and in accordance with this law and these regulations.

"Test, analysis, measurement or monitoring required [by pursuant to] the Virginia Water Control Law" means any method of analysis required by the Virginia Water Control Law (§62.1-44.2 et seq.); by the regulations promulgated under this law (9VAC25), including any method of analysis listed or adopted by reference in [~~9VAC25 31, 9VAC25 32, 9VAC25 110, 9VAC25 120, 9VAC25 151, 9VAC25 180, 9VAC25 190, 9VAC25 192, or 9VAC25 210~~ 9VAC25] ; or by any permit or order issued under and in accordance with this law and these regulations.

"Test method" means an adoption of a scientific technique for [performing] a specific measurement [~~problem~~], as documented in a laboratory standard operating procedure or [as] published by a recognized authority.

"Traceability" means the property of a result of a measurement whereby it can be related to appropriate standards, generally international or national standards, through an unbroken chain of comparisons.

"U.S. Environmental Protection Agency" means the federal government agency with responsibility for protecting, safeguarding and improving the natural environment (i.e., air, water and land) upon which human life depends.

"Virginia Air Pollution Control Law" means [Chapter 13] §10.1-1300 [et seq.] of the Code of Virginia, which is titled "Air Pollution Control Board."

["Wastewater" means liquid and water-carried industrial wastes and domestic sewage from residential dwellings,

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commercial buildings, industrial and manufacturing facilities and institutions.]

"Waterworks" means each system of structures and appliances used in connection with the collection, storage, purification, and treatment of water for drinking or domestic use and the distribution thereof to the public, except distribution piping.

["Zooplankton" means microscopic animals that float freely with voluntary movement in a body of water.]

1VAC30-45-50. Scope of certification.

A. Noncommercial environmental laboratories shall be certified based on the general laboratory standards set out in Part II (1VAC30-45-200 et seq.) of this chapter and on the specific test methods or analysis, monitoring or measurement required by regulatory permit or other requirement under the Virginia Air Pollution Control Law, Virginia Waste Management Act or Virginia Water Control Law, the regulations promulgated under these laws, and by permits and orders issued under and in accordance with these laws or regulations.

B. DGS-DCLS shall review alternative test methods and procedures for certification when these are proposed by the applicant laboratory. The provisions of 1VAC30-45-70 E and 1VAC30-45-90 B govern alternative test methods and procedures.

C. Certification shall be granted for [a specific field or one or more] fields of [~~testing~~ certification], including the [matrix, the] technology and methods used by the noncommercial environmental laboratory, and the individual analytes or analyte groups determined by the particular method.

1VAC30-45-60. General: certification requirements.

A. Components of certification. The components of certification include review of personnel qualifications, on-site assessment, proficiency testing, and quality systems. The criteria for these components, set out in Part II (1VAC30-45-200 et seq.) of this chapter, shall be fulfilled for certification.

B. Individual laboratory sites and mobile laboratories.

1. Individual laboratory sites are subject to the same application process, assessments, and other requirements as environmental laboratories. Any remote laboratory sites are considered separate sites and subject to separate on-site assessments.

2. Laboratories located at the same physical location shall be considered an individual laboratory site if these laboratories are owned [~~or operated~~] by the same person, and have the same laboratory manager and quality system.

3. [Laboratories located at separate, noncontiguous physical locations may request to be considered as an

individual laboratory site if these laboratories are owned by the same person and have the same laboratory manager and quality system.]

[4.] A mobile laboratory, which is configured with equipment to perform analyses, whether associated with a fixed-based laboratory or not, is considered an environmental laboratory and shall require separate certification. This certification shall remain with the mobile laboratory and be site independent. Moving the configured mobile laboratory to a different site will not require a new or separate certification. Before performing analyses at each new site, the laboratory shall ensure that instruments and equipment have been checked for performance and have been calibrated.

1VAC30-45-70. Process to apply and obtain certification.

A. Duty to apply. All owners [~~or operators~~] of noncommercial environmental laboratories shall apply for certification as specified by the provisions of this section.

B. Timely initial applications.

1. Owners [~~or operators~~] of noncommercial environmental laboratories applying for certification under this chapter for the first time shall submit an application to DGS-DCLS no later than [~~240 calendar days after the effective date of this chapter~~ May 29, 2009].

2. Owners [~~or operators~~] of noncommercial environmental laboratories that come into existence after [~~this chapter becomes effective~~ October 1, 2008,] shall submit an initial application to DGS-DCLS no later than 180 calendar days prior to beginning operation.

C. Timely renewal applications. The owner [~~or operator~~] of [~~an~~ a] certified noncommercial environmental laboratory shall submit an application for renewal of certification at least 90 calendar days prior to expiration of certification.

D. Responsibilities of the owner [~~or~~ and] operator [when the laboratory is owned by one person and operated by another person].

1. When an environmental laboratory is owned by one person but is operated by another person, the operator may submit the application for the owner.

2. If the operator fails to submit the application, the owner is not relieved of his responsibility to apply for certification.

3. While DGS-DCLS may notify noncommercial environmental laboratories of the date their applications are due, failure of DGS-DCLS to notify does not relieve the owner [~~or operator~~] of his obligation to apply under this chapter.

E. Submission of applications for modifications to certification. An owner [~~or operator~~] of a certified

noncommercial environmental laboratory shall follow the process set out in 1VAC30-45-90 B to add a new [~~technology~~ matrix, technology/method], an analyte or [~~a test method~~ analyte group], modify a test method or institute use of a method [or technology] not in the laboratory's standard operating procedures, including alternative test methods or procedures.

F. Contents of application.

1. Applications shall include the following information and documents:

- a. Legal name of laboratory;
- b. Name of owner of laboratory;
- c. Name of operator of laboratory, if different than owner;
- d. Street address and description of location of laboratory;
- e. Mailing address of laboratory, if different from street address;
- f. Address of owner, if different from laboratory address;
- g. Name, address, telephone number, facsimile number and e-mail, as applicable, of responsible official;
- h. Name, address, telephone number, facsimile number and e-mail, as applicable, of laboratory manager;
- i. Name, address, telephone number, facsimile number and e-mail, as applicable, of designated quality assurance officer;
- j. Name [title,] and telephone number of laboratory contact person;
- k. Laboratory type (e.g., public water system, public wastewater system [or combination of the two] , or industrial (with type of industry indicated));
- l. Laboratory hours of operation;
- m. Fields of testing (program, test methods, and analytes) certification (matrix, technology/method, and analyte/analyte group)] for which certification is sought;
- n. Methods employed, including analytes;
- o. The results of the three most recent proficiency test studies;
- p. Quality assurance manual;
- q. Lab identification number (for renewal only); and
- r. For mobile laboratories, a unique vehicle identification number, such as a manufacturer's vehicle identification number (VIN#), serial number, or license number.

2. Fee. The application shall include payment of the fee as specified in 1VAC30-45-130.

3. Certification of compliance.

a. The application shall include a "Certification of Compliance" statement signed and dated by the responsible official, by the quality control officer and by the laboratory manager.

b. The certification of compliance shall state: "The applicant understands and acknowledges that the laboratory is required to be continually in compliance with the Virginia environmental laboratory certification program regulation (1VAC30, Chapter 45) and is subject to the provisions of 1VAC30-45-100 in the event of noncompliance. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the laboratory or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. Submitting false information or data shall result in denial of certification or decertification. I hereby further certify that I am authorized to sign this application."

G. Completeness determination.

1. DGS-DCLS shall determine whether an application is complete and notify the laboratory of the result of such determination. [~~Except during~~ During the initial certification period, DGS-DCLS shall provide this notice within 90 calendar days of its receipt of a laboratory's initial application. Following] the initial certification period, DGS-DCLS shall provide this notice within 60 calendar days of DGS-DCLS's receipt of [~~the~~ a laboratory's initial] application [and within 30 calendar days of DGS-DCLS' receipt of a laboratory's renewal application].

2. An application shall be determined complete if it contains all the information required pursuant to subsection F of this section and is sufficient to evaluate the laboratory prior to the on-site assessment. Designating an application complete does not preclude DGS-DCLS from requesting or accepting additional information.

3. If DGS-DCLS determines that an application is incomplete, DGS-DCLS's notification of such determination shall explain why the application is incomplete and specify the additional information needed to make the application complete.

4. Except during the initial certification period, if no determination is made within 60 calendar days of DGS-

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DCLS's receipt of either (i) the application or (ii) additional information, in the case of an application determined to be incomplete, the application shall be determined to be complete. [During the initial certification period, the time period shall be 90 calendar days.]

5. [If the laboratory has not submitted the required additional information within 90 days of receiving a notice from DGS-DCLS requesting additional information,] DGS-DCLS may [~~deny any application from a laboratory and require the laboratory to submit a new application if the laboratory does not submit additional information required by DGS DCLS within 90 days of receiving a notice that requires additional information~~ return the incomplete application and inform the laboratory that the application cannot be processed. The laboratory may then submit a new application].

H. Grant of interim certification pending final determination on application.

1. DGS-DCLS shall grant a laboratory interim certification status under the following conditions:

a. The laboratory's application is determined to be complete;

b. The laboratory has satisfied all the requirements for certification, including all requests for additional information, with the exception of on-site assessment; and

c. DGS-DCLS is unable to schedule the on-site assessment within 90 days of its determination that the application is complete [~~and that the laboratory has satisfied all other requirements for certification (for initial applications) or before the laboratory's certification expires (for renewal applications)].~~

2. A laboratory with interim certification [status] shall have the same rights and status as a laboratory that has been granted certification by DGS-DCLS.

3. Interim certification expires when DGS-DCLS issues a final determination on certification.

I. On-site assessment.

[1.] An on-site assessment shall be performed and the follow-up and reporting procedures for such assessments shall be completed in accordance with Article 2 (1VAC30-45-300 et seq.) of Part II of this chapter prior to issuance of a final determination on certification.

[2. Alternative on-site assessment option. If DGS-DCLS is unable to schedule an on-site assessment under the conditions of subsection H 1 c of this section, the owner of the applicant laboratory may use third-party on-site assessors instead of DGS-DCLS on-site assessors under the following conditions:

a. The third-party on-site assessors are on a DGS-DCLS-approved list of on-site assessors, and

b. The owner of the applicant laboratory agrees to pay the third-party on-site assessors.]

J. Final determination on certification.

1. Upon completion of the certification review process and corrective action, if any, DGS-DCLS shall grant certification in accordance with subsection K of this section or deny certification in accordance with subsection L of this section.

2. Except during the initial certification period, DGS-DCLS shall complete action on a laboratory's application within nine months from the time [~~an~~ a completed] application is [~~determined to be complete~~ received from the laboratory].

K. Grant of certification.

1. When a laboratory meets the requirements specified for receiving certification, DGS-DCLS shall issue a certificate to the laboratory. The certificate shall be sent to the laboratory manager, and the responsible official shall be notified.

2. The [director of DGS-DCLS shall sign the] certificate [~~shall be signed by the director of DGS DCLS and~~. The certificate] shall include the following information:

a. Name of owner [~~or operator~~] of laboratory;

[b. Name of] operator of laboratory [, if different from owner];

[~~b. c.~~] Name of responsible official;

[~~e. d.~~] Address and location of laboratory;

[~~d. e.~~] Laboratory identification number;

[~~e. f.~~] Fields of [~~testing (program, method certification (matrix, technology/method) , [analyte or other parameter~~ analyte/analyte group)] for which certification is granted;

f. Any addenda or attachments; and

g. Issuance date and expiration date.

3. The laboratory shall post the most recent certificate of certification and any addenda to the certificate issued by DGS-DCLS in a prominent place in the laboratory facility.

4. Certification shall expire two years after the date on which certification is granted.

L. Denial of certification.

1. DGS-DCLS shall deny certification to an environmental laboratory in total if the laboratory [~~owner or an employee falsifies~~ is found to be falsifying] any data or [~~provides~~ providing] false information to support certification.

2. Denial of certification in total or in part.

a. DGS-DCLS may deny certification to an environmental laboratory in total or in part if the laboratory [owner or an employee] fails to do any of the following:

- (1) Pay the required fees.
- (2) Employ laboratory staff to meet the personnel qualifications as required by Part II (1VAC30-45-200 et seq.) of this chapter.
- (3) Successfully analyze and report proficiency testing samples as required by Part II of this chapter.
- (4) Submit a corrective action report in accordance with Part II of this chapter in response to a deficiency report from the on-site assessment team within the required 30 calendar days.
- (5) Implement the corrective actions detailed in the corrective action report within the time frame specified by DGS-DCLS.
- (6) Pass required on-site assessment as specified in Part II of this chapter.
- (7) Implement a quality system as defined in Part II of this chapter.

b. DGS-DCLS may deny certification to an environmental laboratory in total or in part if the laboratory's application is not determined to be complete within 90 calendar days following notification of incompleteness because the laboratory is delinquent in submitting information required by DGS-DCLS in accordance with this chapter.

c. DGS-DCLS may deny certification to an environmental laboratory in total or in part if the DGS-DCLS on-site assessment team is unable to carry out the on-site assessment pursuant to Article 2 (1VAC30-45-300 et seq.) of Part II of this chapter because [an employee, owner, or other a] representative of the environmental laboratory denied the team entry during [the laboratory's] normal business hours [that it specified in its application].

3. [To deny certification, DGS DCLS shall provide by certified mail written notification of denial to the responsible official and manager of the laboratory, including a detailed explanation of the reason for denial and notice of the right to appeal such denial DGS-DCLS shall follow the process specified in 1VAC30-45-110 when denying certification to an environmental laboratory].

M. Reapplication following denial of certification.

1. Upon denial of certification, the laboratory shall wait six months before reapplying for certification.

2. DGS-DCLS shall not waive application fees for a laboratory reapplying for certification.

1VAC30-45-80. Maintaining certification.

A. Certification remains in effect until withdrawn by DGS-DCLS, withdrawn voluntarily at the written request of the certified laboratory, or [until] expiration of the certification period. To maintain certification, the certified laboratory shall comply with the elements listed in this section and in 1VAC30-45-90.

B. Quality systems. Laboratories seeking to maintain certification under this chapter shall assure consistency and promote the use of quality assurance and quality control procedures. Article 4 [(1VAC30-600 1VAC30-45-600) et seq.] of Part II of this chapter specifies the quality assurance and quality control requirements that shall be met to maintain certification.

C. Proficiency tests. Laboratories seeking to maintain certification under this chapter shall perform proficiency tests as required under Article 3 (1VAC30-45-500 et seq.) of Part II of this chapter.

D. Recordkeeping and retention. All laboratory records associated with certification parameters shall be kept as provided by the requirements for records under Part II (1VAC30-45-200 et seq.) of this chapter. These records shall be maintained for a minimum of three years unless the records are required to be maintained for a longer period by another section of this regulation or another regulation. All such records shall be available to DGS-DCLS upon request.

1VAC30-45-90. [Changing Notifications and changes to] certification [elements and] status.

A. Changes to key certification criteria. [±] The certified laboratory shall notify DGS-DCLS [as set out in subdivision 2 of this subsection in writing] of any changes in key certification criteria within 30 calendar days of the change. Key certification criteria are laboratory ownership, location, key personnel, [test methods, analytes,] and major instrumentation.

[2. The laboratory may initially notify DGS DCLS of any change to key certification criteria by e mail, facsimile or telephone. The notification by e mail, facsimile or telephone subsequently shall be submitted in writing.

3. As specified in subsection B of this section, changes to key certification criteria that affect the laboratory's scope of certification require review and approval by DGS DCLS in advance of the laboratory's making the change.]

B. Changes to scope of certification.

1. DGS-DCLS [shall review and may] approve [the addition of a laboratory's application to add] a new [matrix,] technology, [an] analyte, or [a] test method to

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a laboratory's scope of certification [or to otherwise modify the laboratory's scope of certification by performing a data review] .

2. To [~~begin the process of review apply~~], the owner [~~or operator~~] of the certified laboratory [~~that wants to add to the laboratory's scope of certification~~] shall submit the following [~~application materials~~] [to DGS-DCLS:

a. A letter signed by the owner [~~or operator~~] that briefly summarizes the addition to be made to the laboratory's scope of certification.

b. Pertinent information demonstrating [~~that the laboratory is capable of performing the test method or using the technology to be added such as proficiency testing performance and quality control performance the laboratory's capability to perform the additional matrix, technology/method, or analyte/analyte group, such as proficiency testing performance and quality control performance~~] .

c. A written standard operating procedure covering the new [~~method, analyte, or technology matrix, technology/method, or analyte/analyte group~~] .

[~~DGS-DCLS may request additional material to complete its review.~~]

3. DGS-DCLS may approve a laboratory's application for modification to its scope of certification by performing a review of the application materials submitted, without an on-site assessment. [~~An~~ The] addition of a [~~new~~] technology or test method requiring [the use of] specific equipment may require an on-site assessment. Other reviews of performance and documentation may be carried out by DGS-DCLS [;] depending on the modification for which the laboratory applies.

4. [Within 90 calendar days of the receipt of the application from the certified environmental laboratory, DGS-DCLS shall review and determine whether the proposed modification may be approved.

5.] If the proposed modification to the laboratory's scope of certification is approved, DGS-DCLS shall amend the laboratory's certificate of certification.

C. Change of ownership or location of laboratory.

1. The certified laboratory shall submit a written notification to DGS-DCLS of the change of ownership or location of the laboratory within 30 calendar days of the change. [This requirement applies only to fixed-based and not mobile laboratories.]

2. Certification may be transferred when the legal status or ownership of a certified laboratory changes [~~without affecting its~~ as long as the transfer does not affect the laboratory's] personnel, equipment, [~~and facilities or organization~~] .

3. [~~DGS-DCLS may charge a transfer fee and may conduct an on-site assessment to verify the effects of such changes on laboratory performance~~ If the laboratory's personnel, equipment, or organization are affected by the change of legal status or ownership, DGS-DCLS may require recertification or reapplication in any or all of the categories for which the laboratory is certified] .

[4. DGS-DCLS may require an on-site assessment depending on the nature of the change of legal status or ownership. DGS-DCLS shall determine the elements of any on-site assessment required.]

[4. 5.] When [~~a laboratory changes~~ there is a change in] ownership, the new owner [of the certified laboratory] shall assure [~~that the history of the laboratory ownership can be traced through~~ historical traceability of the laboratory identification numbers.]

[~~5. 6. When there is a change in ownership, the new owner of the certified laboratory shall keep~~] all records and analyses performed by the previous owner under his scope of certification [~~shall be kept~~] for a period of [~~five three~~] years [~~. As required under 1VAC30-45-80 D, all such records shall be made available to DGS-DCLS upon request~~ , or longer if required by other regulations. These records and analyses are subject to inspection by DGS-DCLS during this three-year period. This provision applies regardless of change of ownership, accountability or liability] .

D. Voluntary withdrawal. Any environmental laboratory owner [~~or operator~~] who wishes to withdraw the laboratory from its certification status or from being certified, in total or in part, shall submit written notification to DGS-DCLS no later than 30 calendar days before the end of the laboratory's certification term. Within 30 calendar days, DGS-DCLS shall provide the laboratory with a written notice of withdrawal.

1VAC30-45-100. Decertification.

A. DGS-DCLS shall decertify an environmental laboratory in total [~~for any of the following reasons:~~ if the laboratory is found to be falsifying any data or providing false information to support certification.]

[~~1. Submittal by the laboratory owner or an employee of proficiency test sample results generated by another laboratory as its own.~~

~~2. Falsification by a laboratory owner or an employee of any data or the provision of false information by any laboratory owner or an employee to support certification.~~

~~3. Conviction of the laboratory owner or an employee of charges relating to the falsification of any report concerning a laboratory analysis.~~]

B. DGS-DCLS may decertify an environmental laboratory in part or in total when the laboratory [~~owner or an employee~~] has failed to do any of the following:

1. Participate in the proficiency testing program as required by Article 3 [~~(1VAC30-40-500~~ 1VAC30-45-500] et seq.) of Part II of this chapter.
2. Complete proficiency testing studies and maintain a history of at least two successful proficiency testing studies for each affected certified field of testing out of the three most recent proficiency testing studies as defined in Article 3 (1VAC30-45-500 et seq.) of Part II of this chapter.
3. Maintain a quality system as defined in Article 4 (1VAC30-45-600 et seq.) of Part II of this chapter.
4. Employ staff that meet the personnel qualifications in Article 1 (1VAC30-45-200 et seq.) of Part II of this chapter.
5. Submit an acceptable corrective action report after two opportunities as specified in 1VAC30-45-390.
6. Implement corrective action specified in the laboratory's corrective action report as set out under 1VAC30-45-390.
7. Notify DGS-DCLS of any changes in key certification criteria as set forth in 1VAC30-45-90.
8. Use accurate references to the laboratory's certification status in the laboratory's documentation.

C. [~~To decertify an environmental laboratory, DGS-DCLS shall provide by certified mail written notification of the decertification to the responsible official and manager of the laboratory, including a detailed explanation of the reason for the decertification and notice of the right to appeal such decertification~~ DGS-DCLS shall follow the process specified in 1VAC30-45-110 when decertifying an environmental laboratory].

D. Responsibilities of the environmental laboratory and DGS-DCLS when certification has been withdrawn.

1. Laboratories that lose their certification in full shall return their certificate to DGS-DCLS.
2. If a laboratory loses certification in part, an addendum to the certificate shall be issued by DGS-DCLS to the laboratory.

E. After correcting the reason or cause for decertification under 1VAC30-45-100 A or B, the laboratory owner [~~or operator~~] may reapply for certification.

1VAC30-45-110. [~~Appeal procedures~~ Procedures to deny certification, to decertify a laboratory, and appeal procedures].

A. [If DGS-DCLS believes it has grounds to deny certification or to decertify an environmental laboratory,]

DGS-DCLS shall notify [~~an~~ the] environmental laboratory in writing of its [~~decision to deny certification or to decertify an environmental laboratory~~ intent to hold an informal fact finding under §2.2-4019 of the Code of Virginia in order to make a decision on the denial of certification or decertification. DGS-DCLS shall send this notification by certified mail to the responsible official and provide a copy to the manager of the environmental laboratory. The notice of informal fact finding shall provide a detailed explanation of the basis for the notice] .

B. [~~All appeals taken from actions of the DGS-DCLS director relative to the provisions of this chapter shall be governed by the Virginia Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia)~~ . Following the informal fact finding held pursuant to §2.2-4019 of the Code of Virginia, the director shall render a decision regarding certification, and shall send this notification by certified mail to the responsible official and provide a copy to the manager of the environmental laboratory. If the director's decision is adverse to the environmental laboratory, the responsible official may appeal this decision in accordance with §2.2-4026 of the Code of Virginia and Part 2A of the Rules of the Supreme Court of Virginia.

C. The provisions of this section do not preclude informal discussions between DGS-DCLS and any environmental laboratory that has been notified of a possible denial of certification or of decertification. These informal discussions to resolve the concerns that prompted the notice shall be held prior to the informal fact-finding proceeding.

D. The certification status of an environmental laboratory appealing decertification shall not change pending the final decision of the appeals filed under the Virginia Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia) and Part 2A of the Rules of Supreme Court of Virginia.]

1VAC30-45-120. Exemptions.

A. DGS-DCLS may grant a partial or full exemption from the requirements of this chapter based on compliance and performance.

B. DGS-DCLS may consider granting an exemption if a laboratory applies for an exemption and has met all certification requirements for a period of four consecutive years.

C. An environmental laboratory may apply for an exemption by submitting a request. The request shall include the following information:

1. The scope of the requested exemption;
2. Whether the exemption should be partial or total;
3. If partial, what form the exemption will take; and

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4. Why the exemption is appropriate.

D. Upon receiving an application for an exemption, DGS-DCLS shall provide notice of the request for an exemption in the Virginia Register of Regulations.

E. The notice shall provide a 30-day comment period on the request and shall specify the nature of the request.

F. DGS-DCLS shall grant or deny the exemption request and provide a written response to the requesting laboratory within 90 calendar days of receipt of the request.

G. Exemptions granted by DGS-DCLS shall be for a period of no more than 24 months.

1VAC30-45-130. Fees.

A. General.

1. Fees shall be submitted with all applications [, including reapplications,] for certification [and all renewal applications for certification]. Applications shall not be designated as complete until the fee is received by DGS-DCLS.

2. Fees shall be nonrefundable.

B. Fee computation.

1. Fees shall be computed based on the test methods for which a laboratory seeks certification and on the laboratory type. For the purpose of fee calculation, the designations for the laboratory type are (i) a general environmental laboratory or (ii) an environmental laboratory performing only simple test procedures.

2. The fee shall be the total of the base fee and the test category fees for the specific laboratory type to be certified.

3. The test category fees cover categories for the test methods to be certified as specified in the laboratory's application.

4. If the total of the base fee and the test category fees is more than the maximum fee designated for the specific laboratory type to be certified, the laboratory shall pay the maximum fee.

C. Laboratories performing only simple test procedures.

1. The base fee shall be \$100.

2. The maximum fee shall be [~~\$400~~ \$600].

D. General environmental laboratories.

1. The base fee shall be \$1,700.

2. The maximum fee shall be [~~\$3,800~~ \$5,200].

E. Test category fees.

1. Fees shall be charged for each category of tests to be certified.

2. The fee for each category includes one or more analytical methods unless otherwise specified. With the exception of the test categories labeled oxygen demand and physical, test categories related to test methods for water are defined by 40 CFR 136.3.

3. Fees.

TEST CATEGORY	FEE
Oxygen demand (BOD or COD)	[\$300 \$375]
Bacteriology	[\$300 \$375]
Inorganic chemistry, fewer than four methods	[\$300 \$375]
Inorganic chemistry, four or more methods	[\$600 \$750]
Chemistry metals, [fewer than four one - two] methods	[\$300 \$450]
Chemistry metals, [four or] more [than two] methods	[\$600 1,000]
Organic chemistry, fewer than four methods	[\$350 \$600]
Organic chemistry, four or more [methods]	[\$700 \$1,200]
[Whole effluent Aquatic] toxicity, acute methods only	[\$300 \$400]
[Whole effluent Aquatic] toxicity, acute and chronic methods	[\$600 \$700]
Radiochemical	[\$900 \$1,000]
Physical	[\$300 \$375]

F. Additional fees. [Additional fees shall be charged to laboratories applying for the following: (i) modification to scope of certification under 1VAC30-45-90 B, (ii) transfer of ownership under 1VAC30-45-90 C, (iii) exemption under 1VAC30-45-120, (iv) request that multiple noncontiguous laboratory sites be considered as one site under 1VAC30-45-60 B 3, or (v) petition for a variance under 1VAC30-45-140.]

1. General environmental laboratories applying for an exemption under 1VAC30-45-120 shall pay an application fee of \$250 and if the exemption is granted, up to an additional \$1,000 depending on the scope of the exemption. Laboratories performing only simple test procedures applying for an exemption under 1VAC30-45-120 shall pay an application fee of \$100 and if the exemption is granted, up to an additional \$1,000 depending

on the scope of the exemption. The fee assessed for the scope of the exemption shall be based on the actual time needed for DGS-DCLS to make the determination. The fee assessed shall be calculated using the method in [~~subdivision 4~~ subsection G] of this [~~subsection~~ section].

2. For any certified environmental laboratory that applies to modify its scope of certification as specified under 1VAC30-45-90 B, DGS-DCLS shall assess a fee determined by the method in [~~subdivision 4~~ subsection G] of this [~~subsection~~ section].

3. Under 1VAC30-45-90 C, DGS-DCLS may charge a transfer fee to a certified laboratory that transfers ownership. [A fee shall be charged if DGS-DCLS (i) needs to review documentation sent by the laboratory about the transfer of ownership or (ii) determines that an on-site assessment is necessary to evaluate the effect of the transfer of ownership. DGS-DCLS shall assess a fee determined by the method in subsection G of this section.] If DGS-DCLS determines that a fee should be charged, the fee shall be a minimum of \$100 and a maximum of \$1,000. [~~If DGS DCLS determines that an on site assessment is necessary to evaluate the effect of the transfer of ownership, DGS DCLS shall assess a fee determined by the method in subdivision 4 of this subsection. If, under 1VAC30-45-90 C, DGS-DCLS determines that the change of ownership or location of laboratory requires recertification of or reapplication by the laboratory, the laboratory shall pay the application fees required under this section.~~]

4. Under 1VAC30-45-60 B 3, the owner of multiple noncontiguous laboratories may request that DGS-DCLS consider these laboratories to be one site. If, as a result of the request being granted, DGS-DCLS needs to perform multiple on-site assessments, DGS-DCLS shall charge a fee for the additional on-site assessments. The fee shall be the sum of reasonable travel costs and labor charges for the additional on-site assessments. The labor charges will be determined following the method in subsection G of this section.

5. Under 1VAC30-45-140, any person regulated by this chapter may petition the director to grant a variance from any requirement of this chapter. DGS-DCLS shall charge a fee for the time needed to review the petition, including any on-site assessment required. The fee shall be determined by the method specified in subsection G of this section.]

[~~4. G.~~] Fee determination.

[~~a. 1.~~] The fee shall be the sum of the total hourly charges for all reviewers plus any on-site review costs incurred.

[~~b. 2.~~] An hourly charge per reviewer shall be determined by (i) obtaining a yearly cost by multiplying the reviewer's

annual salary by 1.35 (accounts for overhead such as taxes and insurance) and then (ii) dividing the yearly cost by 1,642 (number of annual hours established by Fiscal Services, DGS, for billing purposes).

[~~e. 3.~~] The charge per reviewer shall be determined by multiplying the number of hours expended in the review by the reviewer's hourly charge.

[~~f. 4.~~] If an on-site review is required, travel time and on-site review time shall be charged at the same hourly charge per reviewer, and any travel expenses shall be added.

[~~G. On site assessment fees. When, with the concurrence of the applicant laboratory, DGS DCLS uses approved, third-party on site assessors, the cost of the on site assessment shall be paid by the applicant.~~ H. Out-of-state laboratories - travel costs. The owner of an environmental laboratory located in another state who applies for certification under this chapter shall also pay a fee equal to the reasonable travel costs associated with conducting an on-site assessment at the laboratory. Reasonable travel costs include transportation, lodging, per diem, and telephone and duplication charges.

I. DGS-DCLS shall derive the travel costs charged under subsections G and H of this section from the Commonwealth of Virginia reimbursement allowances and rates for lodging, per diem, and mileage.]

1VAC30-45-140. Petitioning for a variance.

A. Any person regulated by this chapter may petition the director to grant a variance from any requirement of this chapter. Any person submitting a petition to the director [~~must~~ shall] meet the provisions of this section. Any petition submitted to the director is subject to the Virginia Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

B. The petition shall be submitted to the director by certified mail and shall include:

1. The petitioner's name and address;
2. A statement of the petitioner's interest in the proposed action;
3. A description of desired action and a citation of the regulation from which a variance is requested;
4. A description of need and justification for the proposed action, including impact of the proposed action on the laboratory's operation;
5. Information demonstrating that the requested variance will meet the purposes and objectives of the relevant regulatory provision and of §2.2-1105 of the Code of Virginia (Environmental Laboratory Certification Program);
6. The duration of the variance, if applicable;

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7. The potential impact of the variance on public health or the environment;

8. Other information believed by the applicant to be pertinent; and

9. The following statement signed by the petitioner or authorized representative: "I certify that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

C. Petition processing.

1. After receiving a petition that includes the information required in subsection B of this section, the director will determine whether the information received is sufficient to render the decision. If the information is deemed insufficient, the director will specify additional information needed and request that it be furnished.

2. The petitioner may submit the additional information requested, or may attempt to show that no reasonable basis exists for additional information. If the director agrees that no reasonable basis exists for the request for additional information, he will act in accordance with subsection D of this section. If the director [~~continues to believe~~ finds] that a reasonable basis exists to require the submission of such information, he will proceed with the denial action in accordance with the Administrative Process Act.

D. Public review of tentative decision. The director will evaluate the application and issue a draft notice tentatively denying the petition, granting the variance as requested, or granting a modified or partial variance. Notification of this tentative decision will be published in the Virginia Register of Regulations. The director will accept comment on the tentative decision for 30 days, and shall hold a public hearing if a request is received or at his discretion if there is no request. The director will issue a final decision after receipt of comments and after the hearing (if any).

E. Conditions for granting variance request or a modified variance.

1. The director may grant the variance if the applicant demonstrates to the satisfaction of the director that:

a. The proposed variance will meet the goals and purposes of the provisions from which a variance is sought; and

b. The variance does not conflict with federal or state law or regulations.

2. If the director grants a variance request, the notice to the petitioner shall provide that the variance may be terminated upon a finding by the director that the petitioner has failed to comply with any requirements of the variance.

3. When a modified variance is granted, the director may:

a. Specify the termination date of the variance;

b. Include a schedule for:

(1) Compliance, including increments of progress, by the laboratory with each requirement of the variance; and

(2) Implementation by the laboratory of such measures as the director finds necessary in order that the variance may be granted.

F. Decisions to grant or deny a petition [in whole or in part, or to modify or terminate a variance] are subject to the provisions of Article 3 (§2.2-4018 et seq.) of the Virginia Administrative Process Act.

1VAC30-45-150. (Reserved.)

1VAC30-45-160. (Reserved.)

1VAC30-45-170. (Reserved.)

1VAC30-45-180. (Reserved.)

1VAC30-45-190. (Reserved.)

Part II
Standards

Article 1
Personnel

1VAC30-45-200. Laboratory manager.

A. Laboratory manager - general.

1. Each environmental laboratory shall designate a person to be responsible for the general oversight of the operation of the laboratory in accordance with this chapter, including the day-to-day functioning and administration of the laboratory, the technical operations, supervision of laboratory procedures, reporting of laboratory results, and implementation of any corrective actions.

2. The title of this person may include but is not limited to laboratory director, technical director, laboratory supervisor or laboratory manager.

[3. A laboratory may appoint one or more technical directors for the appropriate fields of certification for which the laboratory seeks certification.]

B. Laboratory manager - qualifications.

1. For an environmental laboratory that performs procedures beyond simple test procedures, a laboratory manager shall have two years of experience managing an environmental laboratory or performing the analyses for

which the environmental laboratory seeks certification or both.

2. For an environmental laboratory that performs only simple test procedures, [there are no qualification requirements for] a laboratory manager [except that the responsible official] shall [~~be designated by the responsible official~~ designate the laboratory manager] .

[3. A full-time employee of a drinking water or wastewater treatment facility who holds a valid treatment plant operator's certificate appropriate to the nature and size of such facility shall be deemed to meet the educational and experience requirements serving as the laboratory manager of the certified laboratory devoted exclusively to the examination of environmental samples taken within such facility system and limited to the scope of that facility's regulatory permit.]

4. A full-time employee of an industrial waste treatment facility with a minimum of one year of experience under supervision in environmental analysis shall be deemed to meet the requirements for serving as the laboratory manager of a certified laboratory devoted exclusively to the examination of environmental samples taken within such facility for the scope of that facility's regulatory permit.]

1VAC30-45-210. Quality assurance officer.

A. The laboratory shall have a quality assurance officer who shall be responsible for the quality system and its implementation. Where staffing is limited, the quality assurance officer may also be the laboratory manager. The quality assurance officer may be employed on a part-time basis or be a consultant.

B. The quality assurance officer shall have documented training or experience in quality assurance and quality control procedures and be knowledgeable in the quality system as defined in Article 4 (1VAC30-45-600 et seq.) of Part II of this chapter. The quality assurance officer shall have a general knowledge of the analytical test methods for which data review is performed.

C. The responsibilities of the quality assurance officer shall include, but not be limited to, the implementation and oversight of the quality system, the implementation of new quality assurance and control practices, periodic audits of the quality system in place, periodic review of final data reports, and documentation of laboratory quality system deficiencies.

1VAC30-45-220. Laboratory personnel requirements and management responsibilities.

A. The laboratory shall have sufficient personnel, having the necessary education, training, technical knowledge and experience for their assigned functions.

B. The laboratory manager shall ensure that the training of the laboratory personnel is kept up to date.

C. Laboratory personnel shall be responsible for complying with all quality systems requirements set out in Article 4 (1VAC30-45-600 et seq.) of Part II of this chapter that are pertinent to their assigned functions.

D. The laboratory manager shall ensure that laboratory personnel have demonstrated initial and ongoing capability to perform their assigned functions. [See 1VAC30-45-730 E and F.]

E. Records on the relevant qualifications, training skills and experience of the laboratory personnel, including records on demonstrated proficiency for each test method, shall be maintained by the laboratory manager.

1VAC30-45-230. Absence of laboratory manager [or quality assurance officer] .

[~~The~~ When a laboratory manager will be absent for a period exceeding 15 consecutive calendar days, the] laboratory shall [~~nominate deputies in the case of absence of the laboratory manager or the quality assurance officer~~ designate a qualified replacement to perform the manager's function] .

1VAC30-45-240. (Reserved.)

1VAC30-45-250. (Reserved.)

1VAC30-45-260. (Reserved.)

1VAC30-45-270. (Reserved.)

1VAC30-45-280. (Reserved.)

1VAC30-45-290. (Reserved.)

Article 2
On-Site Assessment

1VAC30-45-300. Frequency of on-site assessment.

A. A comprehensive on-site assessment shall be conducted of each laboratory as a condition for granting certification [initially and at renewal every two years] .

B. [~~On-site~~ Other on-site] assessments [~~may be conducted more frequently for cause~~] .

1. [~~Situations that might trigger more frequent on-site assessments include review of a previously deficient on-site assessment, poor performance on a proficiency testing sample, change in other certification elements, or other information concerning the capabilities or practices of the certified laboratory~~ If DGS-DCLS identified a deficiency on a previous on-site assessment, the agency may conduct a follow-up on-site assessment] .

[~~2. DGS-DCLS may reassess a laboratory prior to taking a regulatory or administrative action affecting the laboratory's certification.~~]

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~~3. At~~ 2. DGS-DCLS may conduct an on-site] assessment [~~may be conducted~~] when a [~~major~~ laboratory applies to modify its scope of certification, when a transfer of owner occurs that affects personnel, equipment, or the laboratory facilities, or when a laboratory applies for an exemption or a variance. Any other] change [~~occurs~~ occurring] in a laboratory's operations that might reasonably be expected to alter or impair analytical capability and quality [may trigger an on-site assessment] .

1VAC30-45-310. Announced and unannounced on-site assessments.

A. DGS-DCLS may conduct, at its discretion, either announced or unannounced on-site assessments.

B. Advance notice of an assessment shall not be necessary.

C. To the maximum extent practical, DGS-DCLS, when necessary, shall work with the owner [~~or operator~~] of an environmental laboratory to obtain government security clearances for assessment personnel as far in advance as possible. The owner [~~or operator~~] of the environmental laboratory shall facilitate expeditious attainment of the necessary clearances.

D. To the maximum extent practical, assessment personnel shall minimize disruption of a laboratory's operations and take into account competing demands on the time of laboratory personnel.

1VAC30-45-320. Request for records.

Prior to the actual site visit, DGS-DCLS may request in writing from a laboratory those records required to be maintained by this chapter.

1VAC30-45-330. Areas to be assessed.

[~~A~~ DGS-DCLS shall assess the laboratory against the personnel and quality control standards in Article 1 (1VAC30-45-200 et seq.) and Article 4 (1VAC30-45-600 et seq.) of this part.] The [specific] areas evaluated in an on-site assessment shall include [but not be limited to]:

1. Adequacy of the laboratory facility.
2. Organization and management of the laboratory.
3. Qualifications and experience of laboratory personnel.
4. Receipt, tracking and handling of samples.
5. Quantity, condition, and performance of laboratory instrumentation and equipment.
6. Preparation and traceability of calibration standards.
7. Test methods [~~Including~~ (including) the adequacy of the laboratory's standard operating procedures as well as confirmation of the analyst's adherence to SOPs, and the analyst's proficiency with the described task).

8. Data reduction procedures, including an examination of raw data and confirmation that final reported results can be traced to the raw data/original observations.

9. Quality assurance and quality control procedures, including adherence to the laboratory's quality assurance plan and adequacy of the plan.

[10. Recordkeeping.]

[~~B. These areas shall be evaluated against the standards set out in Article 4 (1VAC30-45-600 et seq.) of Part II of this chapter and the appropriate reference methods.]~~

1VAC30-45-340. National security considerations.

A. Assessments at facilities owned or operated by federal agencies or contractors may require security clearances, appropriate badging, or a security briefing before the assessment begins.

B. The laboratory shall notify DGS-DCLS in writing of any information that is controlled for national security reasons and cannot be released to the public.

1VAC30-45-350. Arrival, admittance and opening conference.

A. Arrival. Assessment personnel shall arrive at the laboratory during established working hours. The laboratory [~~supervisor~~ manager] (or, if unavailable, the laboratory [~~supervisor's~~ manager's] designee) shall be located as soon as possible after the assessment personnel arrive on the premises.

B. Admittance of assessment personnel. A laboratory's refusal to admit the assessment personnel for an on-site assessment shall result in an automatic failure of the laboratory to receive certification or loss of an existing certification by the laboratory, unless there are extenuating circumstances that are accepted and documented by DGS-DCLS. The team leader for the assessment personnel shall notify DGS-DCLS as soon as possible after refusal of entry.

C. Health and safety.

1. Under no circumstance, and especially as a precondition to gain access to a laboratory, shall assessment personnel be required or even allowed to sign any waiver of responsibility on the part of the laboratory for injuries incurred during an assessment.

2. Assessment personnel shall comply with all facility and laboratory safety procedures.

D. Opening conference. An opening conference shall be conducted and shall address the following topics:

1. The purpose of the assessment;
2. The identification of assessment personnel;
3. The test methods that will be examined;

4. Any pertinent records and procedures to be examined during the assessment and the names of the individuals in the laboratory responsible for providing assessment personnel with such records;

5. The roles and responsibilities of laboratory staff and managers;

6. Any special safety procedures that the laboratory may think necessary for the protection of assessment personnel;

7. The standards and criteria that will be used in judging the adequacy of the laboratory operation;

8. Confirmation of the tentative time for the exit conference; and

9. Discussion of any questions the laboratory may have about the assessment process.

1VAC30-45-360. On-site laboratory records review and collection.

A. Records shall be reviewed by assessment personnel for accuracy, completeness and the use of proper methodology for each analyte and test method to be evaluated.

B. Records required to be maintained pursuant to this chapter shall be examined as part of an assessment for certification.

1VAC30-45-370. Observations of and interviews with laboratory personnel.

A. As an element of the assessment process, the assessment team shall evaluate an analysis regimen by requesting that the analyst normally conducting the procedure give a step-by-step description of exactly what is done and what equipment and supplies are needed to complete the regimen. Any deficiencies shall be noted and discussed with the analyst. In addition, the deficiencies shall be discussed in the closing conference.

B. Assessment personnel may conduct interviews with appropriate laboratory personnel.

C. Calculations, data transfers, calibration procedures, quality control and quality assurance practices, adherence to test methods, and report preparation shall be assessed for the complete scope of certification with appropriate laboratory analysts.

1VAC30-45-380. Closing conference.

A. Assessment personnel shall meet with representatives of the laboratory following the assessment for a closing conference.

B. During the closing conference, assessment personnel shall inform the laboratory of the preliminary findings and the basis for such findings. The laboratory shall have an opportunity to provide further explanation or clarification

relevant to the preliminary findings. If the laboratory objects to the preliminary findings during the closing conference, all objections shall be documented by the assessment personnel and included in the final report to DGS-DCLS.

C. Additional problem areas may be identified in the final report.

D. Any potentially illegal activity that may be the subject of further action shall not be discussed in the closing conference.

1VAC30-45-390. Follow-up and reporting procedures.

A. DGS-DCLS shall present an assessment report to the laboratory within 30 calendar days of the assessment.

B. If there are deficiencies identified in the assessment report, the laboratory shall have 30 calendar days from the date of its receipt of the assessment report to provide a response to DGS-DCLS. This response shall be called a corrective action report.

C. An exception to the deadlines specified in subsections A and B of this section may occur in appropriate circumstances. Two circumstances that may be considered appropriate by DGS-DCLS are where a possible enforcement investigation or other action has been initiated or where the laboratory shows good cause for an extension.

D. The corrective action report shall include the following:

1. Any objections that the laboratory has with regard to the assessment report;

2. The action that the laboratory proposes to implement to correct each deficiency identified in the assessment report; and

3. The time period required to accomplish the corrective action.

E. DGS-DCLS shall determine and shall notify the laboratory within 30 calendar days of receipt whether the corrective action report is an acceptable response to the deficiencies identified in the assessment report.

F. If the corrective action report (or a portion of the report) is determined to be unacceptable to remedy the deficiency, DGS-DCLS shall provide written notification to the responsible official and [~~technical director~~ manager] of the laboratory including a detailed explanation of the basis for such determination. Following receipt of such notification, the laboratory shall have an additional 30 calendar days to submit a revised corrective action report acceptable to DGS-DCLS.

1VAC30-45-400. Documentation of on-site assessment.

A. Checklists. The checklists used by assessment personnel during the assessment shall become a part of DGS-DCLS's file for the laboratory.

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B. Assessment report format.

1. The final assessment report shall contain a narrative description of the adequacy of the laboratory as it relates to the assessment standards specified in this chapter and in 1VAC30-45-330.

2. Assessment reports shall contain:

a. Name of owner [~~or operator~~] of the laboratory [(or operator of the laboratory, if different from the owner)];

b. Identification of the laboratory assessed;

c. Date of the assessment;

d. Identification and affiliation of all assessment personnel;

e. Identification of participants in the assessment process;

f. Identification of analytes and test methods assessed;

g. Statement of the objective of the assessment;

h. Summary;

i. Assessment observations, findings (including any deficiencies), objections noted by the laboratory, and requirements; and

j. Comments and recommendations.

3. The assessment findings and requirements shall be referenced to the standards in Part II (1VAC30-45-200 et seq.) of this chapter so that both the finding is understood and the specific requirement is outlined. The assessor shall specify the laboratory records, documents, equipment, procedures, or staff evaluated and the observations that contributed to each identified deficiency. The assessment report shall support with sufficient data all assessment findings and the overall evaluation of the laboratory.

4. The comments and recommendations section may be used to convey recommendations aimed at helping the laboratory improve.

C. Release of report.

1. The assessment report shall be released [initially] by DGS-DCLS to the [responsible official and the] laboratory [~~supervisor~~ manager]. The assessment report shall not be released to the public until findings of the assessment and the corrective actions have been finalized, all information relating to national security has been stricken from the report in accordance with prescribed procedures, and the report has been provided to the laboratory.

2. [~~Any documentation determined to be relevant to an ongoing enforcement investigation shall be considered exempt from release to the public~~ Once the assessment report has been released to the laboratory, any member of the public may request a copy of the report under the

requirements of the Virginia Freedom of Information Act (§2.2-3700 et seq. of the Code of Virginia)].

3. Checklists used by assessment personnel during the on-site assessment shall be provided to the laboratory with the final on-site assessment report.

D. The laboratory shall have access to documentation pertaining to any on-site assessment of its facilities. Any laboratory wishing to review its files shall request such assistance of DGS-DCLS five days prior to visiting DGS-DCLS. A laboratory may request copies of its documents without visiting DGS-DCLS. A reasonable fee may be charged for copying, mailing, and staff time.

1VAC30-45-410. (Reserved.)

1VAC30-45-420. (Reserved.)

1VAC30-45-430. (Reserved.)

1VAC30-45-440. (Reserved.)

1VAC30-45-450. (Reserved.)

1VAC30-45-460. (Reserved.)

1VAC30-45-470. (Reserved.)

1VAC30-45-480. (Reserved.)

1VAC30-45-490. (Reserved.)

Article 3 Proficiency Testing

1VAC30-45-500. Laboratory enrollment in proficiency testing program.

A. Required level of participation.

1. To be certified initially and to maintain certification, a laboratory shall participate in two single-blind, single-concentration PT studies, where available, per year for each PT field of testing for which it seeks or wants to maintain certification. [Laboratories applying to be certified for environmental toxicology (aquatic toxicity, sediment toxicity, or soils toxicity) shall meet the requirements of subdivision 3 of this subsection.]

2. Laboratories shall obtain PT samples from [any PT provider approved under the requirements of the NELAC standards for proficiency test providers set out in Chapter 2 of the 2003 standards such as] NIST [~~or another provider approved by DGS-DCLS~~]. [For PT fields of testing having no approved providers listed by NELAC, the laboratory shall consult DGS-DCLS for an approved provider.]

3. [~~Each laboratory shall participate in at least two PT studies for each PT field of testing per year unless DGS-DCLS approves a different frequency for a given program.~~ Laboratories applying to be certified for environmental toxicology (aquatic toxicity, sediment toxicity, or soils

toxicity). To be certified initially and to maintain certification, a laboratory shall participate in at least one PT study per year (i.e., not more than 12 months apart), when available, for each method code (matrix, organism, exposure system and endpoint) for which it seeks or wants to maintain certification. Laboratories seeking certification for aquatic toxicity testing shall meet the requirements of 1VAC30-45-530.]

B. Requesting certification.

1. ~~[At the time each laboratory applies for certification, [# the laboratory owner] shall notify DGS-DCLS [for which of the] fields of testing [# for which the laboratory] chooses to become certified and shall participate in the appropriate PT studies.~~

2. For all fields of testing for which PT samples are not available, the laboratory shall ensure the reliability of its testing procedures by maintaining a quality system that meets all applicable requirements of Article 4 (1VAC30-45-600 et seq.) of Part II of this chapter.

C. Reporting results.

1. Each laboratory shall authorize the PT study provider to release all certification and remediation results and "acceptable" or "not acceptable" status directly to DGS-DCLS, in addition to the laboratory.

2. The results of all of the PT sample tests including "acceptable" or "not acceptable" status shall be part of the public record.

~~[3. The result of a PT sample, "acceptable" or "not acceptable" status, shall apply to all certified methods within that matrix that a laboratory employs for an analyte.]~~

1VAC30-45-510. Requirements for laboratory testing of PT study samples.

A. The samples shall be analyzed and the results returned to the PT study provider no later than 45 calendar days from the scheduled study shipment date. [Samples for environmental toxicology shall be analyzed within 45 calendar days of sample receipt. The laboratory shall report the result within 45 calendar days of completion of the PT.]

B. The laboratory's management and all analysts shall ensure that all PT samples are managed, analyzed, and reported in the same manner as real environmental samples utilizing the same staff, methods as used for routine analysis of that analyte, procedures, equipment, [and] facilities [~~and frequency of analysis.~~ When analyzing a PT sample, the laboratory shall employ the same calibration, laboratory quality control and acceptance criteria, sequence of analytical steps, number of replicates and other procedures as used when analyzing routine samples.]

C. Restrictions on exchanging information. Laboratories shall comply with all of the following restrictions on the transfer of PT samples and communication of PT sample results prior to the time the results of the study are released. Laboratory management or staff shall not:

1. Send any PT sample, or a portion of a PT sample, to another laboratory for any analysis for which it seeks certification or is certified.

2. Knowingly receive any PT sample or portion of a PT sample from another laboratory for any analysis for which the sending laboratory seeks certification or is certified.

3. Communicate with any individual at another laboratory (including intracompany communication) concerning the PT sample.

4. Attempt to obtain the assigned value of any PT sample from their PT provider.

D. Maintenance of records. The laboratory shall maintain copies of all written, printed, and electronic records, including but not limited to bench sheets, instrument strip charts or printouts, data calculations, and data reports, resulting from the analysis of any PT sample for [~~five~~ three] years or for as long as is required by the applicable regulatory program. These records shall include a copy of the PT study report forms used by the laboratory to record PT results. All of these laboratory records shall be made available to the assessors of DGS-DCLS during on-site audits of the laboratory.

1VAC30-45-520. PT criteria for laboratory certification.

A. Result categories.

1. The criteria described in this section apply individually to each PT field of testing, as defined by the laboratory seeking to obtain or maintain certification in its certification request. These criteria apply only to the PT portion of the overall certification standard.

2. There are two PT result categories: "acceptable" and "not acceptable."

B. Initial and continuing certification.

1. A laboratory seeking to obtain or maintain certification shall successfully complete two PT studies for each requested PT field of testing within the most recent three rounds attempted.

2. Once a laboratory has been granted certification status, it shall continue to complete PT studies for each PT field of testing and maintain a history of at least two acceptable PT studies for each PT field of testing out of the most recent three.

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3. For a laboratory seeking to obtain initial certification, the most recent three rounds attempted shall have occurred within 18 months of the laboratory's application date.

4. For a laboratory seeking initial certification, or for a laboratory performing supplemental testing, the PT studies shall be at least [~~30~~ 15] calendar days apart [from the closing date of one study to the shipment date of another study for the same PT field of testing].

5. For a laboratory to maintain certification, completion dates of successive proficiency rounds for a given PT field of testing shall be approximately six months apart. Failure to meet the semiannual schedule is regarded as a failed study.

C. Supplemental studies.

1. A laboratory may elect to participate in PT studies more frequently than required by the semiannual schedule. This may be desirable, for example, when a laboratory first applies for certification or when a laboratory fails a study and wishes to quickly reestablish its history of successful performance.

2. These additional studies shall be reported and are counted and scored the same way as routinely scheduled studies and shall be at least [~~30~~ 15] calendar days apart.

D. Failed studies and corrective action.

1. Whenever a laboratory fails a study, it shall determine the cause for the failure and take any necessary corrective action. It shall then document in its own records and provide to DGS-DCLS both the investigation and the action taken.

2. If a laboratory fails two out of the three most recent studies for a given field of testing, its performance is considered unacceptable for that field. The laboratory shall then meet the requirements of initial certification as described in subsection B of this section.

E. Second failed study.

1. The PT provider reports laboratory PT performance results to DGS-DCLS at the same time that it reports the results to the laboratory.

2. If a laboratory fails a second study out of the most recent three, as described in subdivision D 2 of this section, DGS-DCLS shall take action within 60 calendar days to determine the certification status [~~of all methods~~] for the unacceptable [~~analyte or analytes for that program and matrix~~] PT field of testing].

F. Scheduling of PT studies.

[~~1. DGS-DCLS may specify which months that laboratories within its authority are required to participate in PT study programs.~~

~~2. If DGS-DCLS chooses to specify the months, then it shall adhere to the required semiannual schedule. If DGS-DCLS does not specify the months, then the laboratory Laboratories shall determine the schedule for their PT studies].~~

G. Withdrawal from PT studies. A laboratory may withdraw from a PT study for an analyte or analytes or for the entire study if the laboratory notifies both the PT provider and DGS-DCLS before the closing date of the PT study. This does not exempt the laboratory from participating in the semiannual schedule.

1VAC30-45-530 [~~(Reserved.)~~ Special requirements for aquatic toxicity.

A. Laboratories seeking certification for aquatic toxicity testing shall be assessed through on-site assessment and evaluation of EPA Discharge Monitoring Report-Quality Assurance (DMR-QA) test results when available. A failed DMR-QA endpoint shall require both of the following:

1. A formal response to DGS-DCLS with an explanation of the probable cause for the endpoint failure and description of corrective actions to be taken (where appropriate).

2. A decision by DGS-DCLS to accept the response or require additional actions on the part of the laboratory or by DGS-DCLS.

B. If a laboratory's response is unacceptable and DGS-DCLS does not require additional on-site assessments, the laboratory shall complete another study. Such additional studies shall be conducted at least 15 calendar days from the previous study until the results are acceptable to DGS-DCLS. DGS-DCLS may conduct additional on-site assessments as necessary based on the results of any additional studies.

C. When the DMR-QA whole effluent toxicity portion does not include all test procedures required for a permit, the laboratory shall perform a proficiency test for aquatic toxicity testing.

D. DGS-DCLS shall not base loss of certification for aquatic toxicity testing solely on PT results.]

1VAC30-45-540. (Reserved.)

1VAC30-45-550. (Reserved.)

1VAC30-45-560. (Reserved.)

1VAC30-45-570. (Reserved.)

1VAC30-45-580. (Reserved.)

1VAC30-45-590. (Reserved.)

Article 4
Quality System

1VAC30-45-600. Quality system.

A. This article sets out the general requirements that an environmental laboratory has to successfully demonstrate to be recognized as competent to carry out specific environmental tests. The environmental laboratory shall establish, implement and maintain a quality system based on the required elements contained in this article.

B. The quality system shall be appropriate to the type, range and volume of testing, analysis, measurement or monitoring performed by the laboratory. ~~[Therefore, for technical or other reasons, some of the requirements of this article may not apply to every laboratory subject to this chapter. When in doubt as to the applicability of an Article 4 requirement, the applicant laboratory should consult DGS DCLS.]~~

C. If more stringent standards or requirements are included in a mandated test method or by regulation, the laboratory shall demonstrate that such requirements are met. If it is not clear which ~~[requirements are standard or requirement is]~~ more stringent, the standard ~~[or requirement]~~ from the method or regulation is to be followed.

D. Provisions pertaining to the management of the quality system appear in 1VAC30-45-610 through 1VAC30-45-700. Provisions pertaining to the technical requirements for the quality system appear in 1VAC30-45-710 through 1VAC30-45-770.

1VAC30-45-610. Quality manual.

A. General.

1. The laboratory shall document its quality system in a quality manual. The quality manual shall reflect all quality assurance and quality control practices and programs used by the laboratory. The required elements of the quality system may be described in more than one document.

2. The quality manual shall be maintained current under the responsibility of the quality assurance officer.

3. The quality manual and any related documents shall be communicated to, understood by, available to, and implemented by all laboratory personnel.

4. The quality manual shall include but not be limited to the elements listed in subsection B of this section.

B. The elements of a quality manual shall include but not be limited to:

1. Title page. The quality manual shall list the following items on the title page:

a. A document title;

b. The laboratory's full name and address;

c. The name, address (if different from above), and telephone number of the responsible official, laboratory manager, and quality assurance officer;

d. The laboratory facility or facilities covered by the quality manual;

e. Signed and dated concurrence, with appropriate titles, of the responsible official, laboratory manager, and quality assurance officer; and

f. The effective date of the quality manual.

2. Table of contents.

3. A quality policy statement, including objectives ~~[of the quality system]~~ and ~~[commitments, signed by top management commitment to good laboratory practices]~~.

4. The organization and management structure of the laboratory, its place in any parent organization and relevant organizational charts.

5. The relationship between management, technical operations, support services and the quality system.

6. The capabilities of the laboratory or scope of its operation.

~~[7. Job descriptions of key staff and reference to the job descriptions of other staff.~~

8. Processes or procedures for establishing that personnel have adequate training and experience in the duties they are expected to carry out and are receiving any needed training.

9. Ethics policy statement developed by the laboratory. Processes and procedures for educating and training personnel in their ethical and legal responsibilities including the potential penalties for improper, unethical or illegal actions.

10. Mechanisms for ensuring that the laboratory reviews all new work to ensure that it has the appropriate facilities and resources before commencing such work.]

~~[7- 11.]~~ Procedures to ensure that all records required by this chapter are retained, as well as procedures for control and maintenance of documentation through a document

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~~control system that ensures that all standard operating procedures, manuals, or documents clearly indicate the time period during which the procedure or document was in force.~~

~~[8. Job descriptions of key staff and reference to the job descriptions of other staff.~~

~~12. Procedures for dealing with complaints.~~

~~13. Procedures for audits and data review.~~

~~14. Reference to verification practices that may include interlaboratory comparisons, proficiency testing programs, use of reference materials and internal quality control schemes.~~

~~15. Procedures to be followed for feedback and corrective action whenever testing discrepancies are detected, or departures from documented policies and procedures occur.~~

~~16. The laboratory management arrangements for permitting departures from documented policies and procedures or from standard specifications when the departures are planned and controlled.~~

~~17. Reference to the major equipment and reference measurement standards used as well as the physical facility and environment used by the laboratory in conducting tests.~~

~~18. Reference to procedures for calibration, verification and maintenance of equipment.~~

~~19. A list of all technology/methods under which the laboratory performs its certified testing.]~~

~~[9. 20.] The laboratory's procedures for achieving traceability of measurements, including standards.~~

~~[10. A list of all test methods under which the laboratory performs its certified testing.~~

~~11. Mechanisms for ensuring that the laboratory reviews all new work to ensure that it has the appropriate facilities and resources before commencing such work.~~

~~12. Reference to the calibration and verification test procedures used.~~

~~13. 21.] Procedures for receiving, handling, storing, and disposing of submitted samples.~~

~~[14. Reference to the major equipment and reference measurement standards used as well as the physical facility and environment used by the laboratory in conducting tests.~~

~~15. Reference to procedures for calibration, verification and maintenance of equipment.~~

~~16. Reference to verification practices, which may include interlaboratory comparisons, proficiency testing programs,~~

~~use of reference materials and internal quality control schemes.~~

~~17. Procedures to be followed for feedback and corrective action whenever testing discrepancies are detected, or departures from documented policies and procedures occur.~~

~~18. The laboratory management arrangements for permitting departures from documented policies and procedures or from standard specifications when the departures are planned and controlled.~~

~~19. Procedures for dealing with complaints.~~

~~20. Procedures for audits and data review.~~

~~21. Processes or procedures for establishing that personnel have adequate training and experience in the duties they are expected to carry out and are receiving any needed training.~~

~~22. Ethics policy statement developed by the laboratory. Processes and procedures for educating and training personnel in their ethical and legal responsibilities including the potential penalties for improper, unethical or illegal actions.~~

~~23. 22.] Reference to procedures for reporting analytical results.~~

C. Review and approval of quality manual.

~~1. The quality assurance officer shall review the laboratory's quality assurance program, manual and any related documentation whenever there is any change in test methods employed by the laboratory, change in equipment, or any other change in the laboratory that [may significantly affect affects] the quality assurance program.~~

~~2. The quality assurance manual shall be reviewed and approved by the quality assurance officer, the laboratory manager, and the responsible official at least annually.~~

1VAC30-45-620. Organization.

~~The laboratory shall specify and document the functional responsibility, level of authority, and interrelationship or lines of communication of all personnel who manage, perform or verify work affecting the quality of tests, analyses, measurements and monitoring. One person may cover more than one organizational function. Each manager and employee of the laboratory shall have a clear understanding of his or her duties and responsibilities and the relationship of those responsibilities to the overall work of the laboratory.~~

1VAC30-45-630. Records.

~~The laboratory shall maintain a record system to suit its particular circumstances and comply with any applicable regulations. [The This] system shall produce unequivocal,~~

accurate records ~~[which that]~~ document all laboratory activities.

1VAC30-45-640. Recordkeeping system and design.

A. The ~~[laboratory shall have a]~~ recordkeeping system ~~[shall allow that allows]~~ historical reconstruction of all laboratory activities that produced the analytical data. The history of the sample shall be readily understood through the documentation. This shall include interlaboratory transfers of samples or extracts or both.

B. The records shall include the identity of personnel involved in sampling, ~~[sample preservation,]~~ sample receipt, preparation, calibration or testing ~~[, all documentation sent by the person transmitting the sample, including a chain of custody record form, if utilized]~~.

C. ~~[All The laboratory shall document all]~~ information relating to the laboratory ~~[facilities facility's]~~ equipment, analytical test methods, and related laboratory activities, such as sample receipt, sample preparation, or data verification ~~[shall be documented]~~.

D. The ~~[laboratory shall have a]~~ recordkeeping system ~~[shall facilitate that facilitates]~~ the retrieval of all working files and archived records for inspection and verification purposes, e.g., set format for naming electronic files.

E. ~~[All Responsible staff shall sign or initial all]~~ changes to records ~~[shall be signed or initialed by responsible staff]~~. The reason for the signature or initials shall be clearly indicated in the records such as "sampled by," "prepared by," or "reviewed by."

F. All generated data except those that are generated by automated data collection systems, shall be recorded directly, promptly and legibly in permanent ink.

G. Entries in records shall not be obliterated by methods such as erasures, overwritten files or markings. All corrections to recordkeeping errors shall be made by one line marked through the error. The individual making the correction shall sign or initial and date the correction. These criteria also shall apply to electronically maintained records.

H. ~~[Computer The laboratory shall keep computer]~~ and electronic data records ~~[shall be kept]~~ in accordance with ~~[the pertinent provisions of this section,]~~ 1VAC30-45-650 C ~~[and E]~~ and 1VAC30-45-730 K.

1VAC30-45-650. Records management and storage.

A. ~~[All The laboratory shall keep all]~~ records, certificates and reports ~~[shall be kept]~~ as required by applicable state and federal recordkeeping laws and regulations ~~[and The laboratory shall]~~ safely ~~[stored store these records]~~ and ~~[held hold them]~~ secure.

B. ~~[All The laboratory shall retain all]~~ records ~~[shall be retained]~~ for a minimum of three years from generation of

the last entry in the records, or longer, if required by an applicable regulatory program, whichever is greater. ~~[All The laboratory shall maintain all]~~ information necessary for the historical reconstruction of data, including all original observations, calculations and derived data, calibration records and a copy of the test report ~~[shall be maintained by the laboratory]~~.

C. Records ~~[which that]~~ are stored only on electronic media shall be supported by the hardware and software necessary for their retrieval. Records that are stored or generated by computers or personal computers shall have hard copy or write-protected backup copies.

D. The laboratory shall establish a record management system for control of laboratory notebooks, instrument logbooks, standards logbooks, and records for data reduction, validation storage and reporting.

E. Access to archived information shall be documented with an access log. ~~[These The laboratory shall protect these]~~ records ~~[shall be protected]~~ against fire, theft, loss, environmental deterioration, vermin and, in the case of electronic records, electronic or magnetic sources.

F. The laboratory shall have a plan to ensure that the records are maintained or transferred in the event that a laboratory transfers ownership or goes out of business. In addition, in cases of bankruptcy, ~~[the laboratory shall follow]~~ appropriate regulatory and state legal requirements concerning laboratory records ~~[shall be followed]~~.

1VAC30-45-660. Required records.

A. Sample handling.

1. ~~[A The laboratory shall maintain a]~~ record of all procedures to which a sample is subjected while in the possession of the laboratory ~~[shall be maintained]~~. These shall include but are not limited to all records pertaining to sample preservation, identification, receipt, acceptance or rejection, log-in, storage and tracking. ~~[The laboratory shall also maintain sampling information on each sample. This includes time and date of collection, type of sample (grab or composite), type of container, sampling point and preservation.]~~

2. The laboratory shall have documented procedures for the receipt and retention of ~~[test items samples, including provisions necessary to protect the integrity of the samples]~~.

B. Laboratory support activities. The ~~[laboratory shall retain the]~~ following documents and data ~~[shall be retained]~~:

1. All original raw data, whether hard copy or electronic, for calibrations, samples and quality control measures, including analysts' work sheets and data output records (chromatograms, strip charts, and other instrument response readout records).

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2. A written description or reference to the specific test method used that includes a description of the specific computational steps used to translate parametric observations into a reportable analytical value.

3. Copies of final reports.

4. Archived standard operating procedures.

5. Correspondence relating to laboratory activities.

6. All corrective action reports, audits and audit responses.

7. Proficiency test results and raw data.

8. Results of data review, verification, and cross-checking procedures.

C. Analytical records. [~~Essential~~ The laboratory shall retain essential] information associated with analytical documents, such as strip charts, tabular printouts, computer data files, analytical notebooks, and run logs [~~shall be retained~~]. This information includes, but is not limited to, all manual calculations, e.g., manual integrations; sample preparation; standard and reagent origin, receipt, preparation, and use; quality control protocols and assessment; and method performance criteria.

D. Administrative records. The [laboratory shall maintain the] following administrative records [~~shall be maintained~~]:

1. Personnel qualifications, experience and training records.

2. Records of demonstration of capability for each analyst [or work cell].

3. A log of names, initials and signatures for all individuals who are responsible for signing or initialing any laboratory record.

1VAC30-45-670. Audits.

A. Internal audits.

1. The laboratory shall arrange for annual internal audits to verify that its operations continue to comply with the requirements of the laboratory's quality system. It is the responsibility of the quality assurance officer to plan and organize audits as required by a predetermined schedule and requested by management.

2. [~~Such audits shall be carried out by trained and qualified personnel~~ Trained] and qualified personnel who are, wherever resources permit, independent of the activity to be audited [, shall carry out these audits]. Personnel shall not audit their own activities except when it can be demonstrated that an effective audit will be carried out.

3. Where the audit findings cast doubt on the correctness or validity of the laboratory's calibrations or test results, the laboratory shall take immediate corrective action.

4. [~~Small laboratories~~ A laboratory] may have an audit performed under contract by an outside source competent to audit the laboratory's operations.

B. Managerial review.

1. The laboratory management shall conduct a review, at least annually, of its quality system and its testing and calibration activities to ensure its continuing suitability and effectiveness and to introduce any necessary changes or improvements in the quality system and laboratory operations.

2. The review shall take account of reports from managerial and supervisory personnel, the outcome of recent internal audits, assessments by external bodies, the results of interlaboratory comparisons or proficiency tests, corrective actions and other relevant factors.

3. The laboratory shall have a procedure for review by management and maintain records of review findings and actions.

4. Where the staff of a laboratory is limited to a single analyst, a supervisor may perform a managerial review.

C. Audit review. All audit and review findings and any corrective actions that arise from them shall be documented. The laboratory management shall ensure that these actions are discharged within the agreed time frame as indicated in the quality manual or standard operating procedures or both. For clarification, documentation of audit and review findings should be a simple procedure, essentially a memorandum setting out the findings of the audit and managerial review and any action to follow.

[~~D. Performance audits. In addition to periodic audits, the laboratory shall ensure the quality of results by implementing checks to monitor the quality of the laboratory's analytical activities. The following are examples of such checks:~~

1. ~~Internal quality control procedures using statistical techniques.~~

2. ~~Participation in proficiency testing or other interlaboratory comparisons.~~

3. ~~Use of certified reference materials or in house quality control using secondary reference materials.~~

4. ~~Replicate testings using the same or different test methods.~~

5. ~~Retesting of retained samples.~~

6. ~~Correlation of results for different but related analysis of a sample (for example, total phosphorus should be greater than or equal to orthophosphate).~~

E. D.] Corrective actions.

1. In addition to providing acceptance criteria and specific protocols for corrective actions in the method standard

operating procedures, the laboratory shall implement general procedures to be followed to determine consistently when departures from documented policies, procedures and quality control have occurred. These procedures may include but are not limited to the following:

- a. Identify the individual or individuals responsible for assessing each quality control data type;
- b. Identify the individual or individuals responsible for initiating or recommending corrective actions or both;
- c. Define how the analyst shall treat a data set if the associated quality control measurements are unacceptable;
- d. Specify how out-of-control situations and subsequent corrective actions are to be documented; and
- e. Specify procedures for management (including the quality assurance officer) to review corrective action reports.

2. To the extent possible, samples shall be reported only if all quality control measures are acceptable. If a quality control measure is found to be out of control, and the data are to be reported, all samples associated with the failed quality control measure shall be reported with the appropriate data qualifiers.

1VAC30-45-680. Subcontracting analytical samples.

A. Where a laboratory subcontracts any part of the testing covered under this chapter, the testing shall only be subcontracted to a laboratory certified under 1VAC30-46 [~~or under another state's NELAP approved program~~].

B. The report from the subcontractor shall be a separate part of the laboratory report and identified as laboratory testing done by a subcontractor.

C. The laboratory shall retain records demonstrating that the requirements of this section have been met.

1VAC30-45-690. Outside support services and supplies.

[~~A. Where the laboratory procures outside services and supplies in support of tests, the laboratory shall use only those outside support services and supplies that are of adequate quality to sustain confidence in the laboratory's tests.~~

~~B. Where no independent assurance of the quality of outside support services or supplies is available, the A. The]~~ laboratory shall have [a policy and] procedures [~~to ensure that purchased equipment, materials and services comply with specified requirements~~ for the selection and purchasing of services and supplies it uses that affect the quality of environmental tests. Procedures shall exist for the purchase, reception and storage of reagents and laboratory consumable materials relevant for the environmental tests].

[B.] The laboratory shall ensure that purchased equipment and consumable materials are not used until they have been inspected, calibrated or otherwise verified as complying with [~~any~~] standard specifications [~~relevant to the calibrations or~~ or requirements defined in the methods for the] tests concerned. [These services and supplies used shall comply with specified requirements. Records of actions taken to check compliance shall be maintained.]

C. The laboratory shall maintain records of all suppliers from whom it obtains support services or supplies required for tests.

1VAC30-45-700. Complaints.

The laboratory shall have documented policy and procedures for the resolution of complaints about the laboratory's activities. Where a complaint or any other circumstance raises doubt concerning the laboratory's compliance with the laboratory's policies or procedures, or with the requirements of this chapter or otherwise concerning the quality of the laboratory's calibrations or tests, the laboratory shall ensure that those areas of activity and responsibility involved are promptly audited in accordance with 1VAC30-45-670 A. Records of the complaint and subsequent actions shall be maintained.

1VAC30-45-710. Environment and work areas.

Laboratory accommodations, test areas, energy sources, lighting, heating and ventilation shall be such as to facilitate proper performance of tests. Laboratories [~~may shall~~] meet the requirements of subdivisions 1 through 8 of this section as appropriate to provide compliance with this requirement.

1. The environment in which these activities are undertaken shall not invalidate the results or adversely affect the required accuracy of measurement. Particular care shall be taken when such activities are undertaken at sites other than the permanent laboratory premises.

2. The laboratory shall provide for the effective monitoring, control and recording of environmental conditions as appropriate. Such environmental conditions may include biological sterility, dust, electromagnetic interference, humidity, mains voltage, temperature, and sound and vibration levels.

3. In instances where monitoring or control of any of the above-mentioned items are specified in a test method or by regulation, the laboratory shall meet and document adherence to the laboratory facility requirements.

4. There shall be effective separation between [testing neighboring] areas [~~when the activities in the testing areas in which there~~] are incompatible [~~(i.e., microbiological culture or incubation and volatile organic chemicals)~~] activities including culture handling or incubation areas and volatile organic chemical handling areas. The

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laboratory shall take measures to prevent cross-contamination] .

5. Access to and use of all areas affecting the quality of these activities shall be defined and controlled.

6. Adequate measures shall be taken to ensure good housekeeping in the laboratory and to ensure that any contamination does not adversely affect data quality.

7. Work spaces shall be available to ensure an unencumbered work area.

8. Work areas include:

- a. Access and entryways to the laboratory;
- b. Sample receipt areas;
- c. Sample storage areas;
- d. Chemical and waste storage areas; and
- e. Data handling and storage areas.

1VAC30-45-720. Equipment and reference materials.

A. The laboratory shall be furnished with all items of equipment, including reference materials, required for the correct performance of tests for which certification is sought. The laboratory shall maintain records of reference materials sufficient to provide proper performance of tests. In those cases where the laboratory needs to use equipment outside its permanent control it shall ensure that the relevant requirements of this article are met.

B. All equipment shall be properly maintained, inspected and cleaned. Maintenance procedures shall be documented.

C. Any item of the equipment that has been subjected to overloading or mishandling, [~~which~~ or that] gives suspect results, or has been shown by verification or otherwise to be defective shall be taken out of service [immediately], clearly identified [as being out of service] and, wherever possible, stored at a specified place until it has been repaired and shown by calibration, verification or test to perform satisfactorily. The laboratory shall examine the effect of this defect on previous calibrations or tests.

D. Each item of equipment including reference materials shall be labeled, marked or otherwise identified to indicate its calibration status.

E. Records of each major item of equipment significant to the tests performed shall be maintained. These records shall include documentation on all routine and nonroutine maintenance activities. The laboratory shall maintain records of reference materials sufficient to provide proper performance of tests. The records [~~may~~ shall] include:

1. The name of the item of equipment;
2. The manufacturer's name, type identification, and serial number or other unique identification;

3. Date received and date placed in service (if available);

4. Current location, where appropriate;

5. If available, condition when received (e.g., new, used, reconditioned);

6. Copy of the manufacturer's instructions, where available;

7. Dates and results of calibrations or verifications or both and date of the next calibration or verification;

8. Details of maintenance carried out to date and planned for the future; and

9. History of any damage, malfunction, modification or repair.

1VAC30-45-730. Test methods and standard operating procedures.

A. Methods documentation.

1. The laboratory shall have documented instructions on the use and operation of all relevant equipment, on the handling and preparation of samples, and for calibration or testing, where the absence of such instructions could jeopardize the calibrations or tests.

2. All instructions, standards, manuals and reference data relevant to the work of the laboratory shall be maintained up to date and be readily available to the staff.

B. Standard operating procedures (SOPs).

1. Laboratories shall maintain SOPs that accurately reflect all phases of current laboratory activities such as assessing data integrity, corrective actions, handling customer complaints, and all test methods. These documents, for example, may be equipment manuals provided by the manufacturer or internally written documents. The test methods may be copies of published methods as long as any changes or selected options in the methods are documented and included in the laboratory methods manual.

2. The SOPs shall be organized. Each SOP shall clearly indicate the effective date of the document, the revision number, and the signature or signatures of the [~~approving authority~~ responsible laboratory manager or managers].

3. Copies of all SOPs shall be accessible to all personnel.

C. Laboratory methods manuals.

1. The laboratory shall have and maintain an in-house methods manual or manuals for each certified analyte or test method.

2. This manual may consists of copies of published or referenced methods or standard operating procedures that have been written by the laboratory. In cases where modifications to the published method have been made by

the laboratory or where the referenced test method is ambiguous or provides insufficient detail, these changes or clarifications shall be clearly described. Each test method shall include or reference where applicable:

- a. Identification of the test method;
- b. Applicable matrix or matrices;
- c. Method detection limit;
- d. Scope and application, including components to be analyzed;
- e. Summary of the test method;
- f. Definitions;
- g. Interferences;
- h. Safety;
- i. Equipment and supplies;
- j. Reagents and standards;
- k. Sample collection, preservation, shipment and storage;
- l. Quality control;
- m. Calibration and standardization;
- n. Procedure;
- o. Calculations;
- p. Method performance;
- q. Pollution prevention;
- r. Data assessment and acceptance criteria for quality control measures;
- s. Corrective actions for out-of-control data;
- t. Contingencies for handling out-of-control or unacceptable data;
- u. Waste management;
- v. References; and
- w. Any tables, diagrams, flowcharts and validation data.

D. Test methods.

1. Laboratories shall use (i) promulgated test methods in accordance with the Code of Federal Regulations; (ii) test methods stated in any current permit issued by Virginia Air Pollution Control Board, the Virginia Waste Management Board, or the State Water Control Board; or (iii) alternate test procedures approved by the board issuing the permit or the Department of Environmental Quality, including applicable quality assurance requirements, and sample preservation, container, storage, and holding time requirements.

2. The laboratory shall use appropriate test methods and procedures for all tests and related activities within its responsibility (including sample handling, transport and storage, preparation and analysis). The method and procedures shall be consistent with the accuracy required and with any standard specifications relevant to the calibrations or tests concerned.

3. When the use of reference test methods for a sample analysis is mandated, only those methods shall be used.

4. Where test methods are employed that are not required, as in the Performance Based Measurement System approach, the methods shall be fully documented and validated (see subsection E of this section).

E. Demonstration of capability.

1. Prior to acceptance and institution of any test method, satisfactory demonstration of method capability is required. In general, this demonstration does not test the performance of the method in real world samples, but in the applicable and available clean [quality system] matrix [sample] (a [~~sample of a~~ quality system] matrix in which no target analytes or interferences are present at concentrations that impact the results of a specific test method), e.g., [drinking] water, solids, biological tissue and air. [~~For analytes that do not lend themselves to spiking, the demonstration of capability may be performed using quality control samples~~ Laboratories shall follow the procedure in subsection F of this section to demonstrate capability].

2. Thereafter, continuing demonstration of method performance, such as laboratory control samples, is required.

3. In cases where a laboratory analyzes samples using a test method that has been in use by the laboratory before July 1999, and there have been no significant changes in instrument type, personnel or test method, the continuing demonstration of method performance and the analyst's documentation of continued proficiency shall be acceptable. The laboratory shall have records on file to demonstrate that an initial demonstration of capability is not required.

4. In all cases, [the laboratory shall complete and retain] a certification statement [~~shall be completed and retained by the laboratory to be made~~ and shall make the statement] available upon request. [~~All~~ The laboratory shall retain all] associated supporting data necessary to reproduce the analytical results summarized in the certification statement [~~shall be retained by the laboratory~~].

5. [A The laboratory shall complete a] demonstration of capability [~~shall be completed~~] each time there is a change in instrument type, personnel or test method.

5. All raw data (including a copy of this certification form) necessary to reconstruct and validate these analyses have been retained at the facility, and that the associated information is well organized and available for review by authorized assessors.

 Laboratory Manager's Name and Title Signature Date

 Quality Assurance Officer's Name Signature
 Date

[⁽¹⁾ True - consistent with supporting data. Accurate - based on good laboratory practices consistent with sound scientific principles and practices. Complete - includes the results of all supporting performance testing. Self-explanatory - data properly labeled and stored so that the results are clear and require no additional explanation.]

H. Sample aliquots. Where sampling (as in obtaining sample aliquots from a submitted sample) is carried out as part of the test method, the laboratory shall use documented procedures and appropriate techniques to obtain representative subsamples.

I. Data verification. Calculations and data transfers shall be subject to appropriate checks. The laboratory shall establish standard operating procedures to ensure that (i) the reported data are free from transcription and calculation errors and (ii) all quality control measures are reviewed and evaluated before data are reported. The laboratory also shall establish standard operating procedures addressing manual calculations including manual integrations.

J. Documentation and labeling of standards and reagents. Documented procedures shall exist for the reception and storage of consumable materials used for the technical operations of the laboratory.

1. The laboratory shall retain records for all standards, reagents [, reference materials] and media including the manufacturer/vendor, the manufacturer's Certificate of Analysis or purity (if [supplied available]), the date of receipt, recommended storage conditions, and an expiration date after which the material shall not be used unless its reliability is verified by the laboratory.

2. Original containers (such as provided by the manufacturer or vendor) shall be labeled with an expiration date.

3. Records shall be maintained on [reagent and] standard [and reference material] preparation. These records shall indicate traceability to purchased stocks or neat compounds, reference to the method of preparation, date of preparation, expiration date and preparer's initials.

4. Sufficient identification of containers of prepared reagents and standards shall be provided to ensure proper performance of tests.

K. Computers and electronic data related requirements. Where computers, automated equipment or microprocessors are used for the capture, processing, manipulation, recording, reporting, storage or retrieval of test data, the laboratory shall ensure the following:

[~~1. All requirements of this article are complied with~~
~~2. 1.] Computer software [developed by the user] is [tested and] documented [to be in sufficient detail and is suitably validated as being] adequate for use [, e.g., internal audits, personnel training, focus point of quality assurance and quality control] .~~

[~~3. 2.] Procedures are established and implemented for protecting the integrity of data, such as integrity of data entry or capture, data storage, data transmission and data processing.~~

[~~4. 3.] Computer and automated equipment are maintained to ensure proper functioning and provided with the environmental and operating conditions necessary to maintain the integrity of calibration and test data.~~

[~~5. 4.] Appropriate procedures are established and implemented for the maintenance of security of data including the prevention of unauthorized access to, and the unauthorized amendment of, computer records.~~

IVAC30-45-740. Measurement traceability and calibration.

A. General requirements. All [measuring operations and testing] equipment [used for environmental tests, including equipment for subsidiary measurements (e.g., for environmental conditions)] having [an a significant] effect on the accuracy or validity [of tests of the result of the environmental test or sampling] shall be calibrated [or verified or both] before being put into service and on a continuing basis. The laboratory shall have an established program [and procedure] for the calibration [and verification] of its [measuring and test] equipment. This includes balances, thermistors, thermometers and control standards. [Such a program shall include a system for selecting, using, calibrating, checking, controlling and maintaining measurement standards, reference materials used as measurement standards, and measuring and test equipment used to perform environmental tests.]

B. Traceability of calibration.

[1. The laboratory shall ensure that the equipment used can provide the uncertainty of measurement needed.]

[~~2. 2.] The overall program of calibration or verification or both and validation of equipment shall be designed and~~

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operated so as to ensure that measurements made by the laboratory are traceable to national standards of measurement [where available].

[~~2. Calibration certificates shall indicate the traceability to national standards of measurement and shall provide the measurement results and associated uncertainty of measurement or a statement of compliance with an identified metrological specification or both. The laboratory shall maintain records of all such certifications.~~]

3. Where traceability [of measurements] to [~~national standards of measurement~~ the International System of Units (SI)] is not [~~applicable~~ the possible or not relevant, the same requirements for traceability to, for example, certified reference materials, agreed methods and/or consensus standards, are required.] [~~the~~ The] laboratory shall provide satisfactory evidence of correlation of results, for example by participation in a suitable program of interlaboratory comparisons, proficiency testing, or independent analysis.

C. Reference standards [and reference materials].

1. Reference [standards. The laboratory shall have a program and procedure for the calibration of its reference standards. Reference standards of measurement shall be calibrated by a body that can provide traceability as described in subsection B of this section. Such reference] standards of measurement held by the laboratory (such as Class S or equivalent weights or traceable thermometers) shall be used for calibration only [and for no other purpose] , unless it can be demonstrated that their performance as reference standards [~~have would~~] not [~~been be~~] invalidated. [~~Reference standards of measurement shall be calibrated by a body that can provide traceability. Where possible, this traceability shall be to a national standard of measurement~~ Where commercially available, this traceability shall be to a national standard of measurement] .

[~~2. There shall be a program of calibration and verification for reference standards.~~

~~3. Where relevant, reference standards and measuring and testing equipment shall be subjected to in service checks between calibrations and verifications.~~ 2. Reference materials. Reference materials shall [, where commercially available,] be traceable [to SI units of measurement, or to certified reference materials] . Where possible, traceability shall be to national or international standards of measurement, or to national or international standard reference materials. [Internal reference materials shall be checked as far as is technically and economically practicable.]

D. Calibration. Calibration requirements are divided into two parts: (i) requirements for analytical support equipment

and (ii) requirements for instrument calibration. In addition, the requirements for instrument calibration are divided into initial instrument calibration and continuing instrument calibration verification.

1. Support equipment. These standards apply to all devices that may not be the actual test instrument, but are necessary to support laboratory operations. These include but are not limited to balances, ovens, refrigerators, freezers, incubators, water baths, temperature measuring devices (including thermometers and thermistors), thermal/pressure sample preparation devices and volumetric dispensing devices (such as Eppendorf®, or automatic dilutor or dispensing devices) if quantitative results are dependent on their accuracy, as in standard preparation and dispensing or dilution into a specified volume.

a. All support equipment shall be maintained in proper working order. The records of all repair and maintenance activities, including service calls, shall be kept.

b. All support equipment shall be calibrated or verified at least annually, using NIST traceable references when available, over the entire range of use. The results of such calibration shall be within the specifications required of the application for which this equipment is used. If not, the laboratory shall either (i) remove the equipment from service until repaired or (ii) maintain records of established correction factors to correct all measurements.

c. Raw data records shall be retained to document equipment performance.

d. Prior to use on each working day, balances, ovens, refrigerators, freezers, and water baths shall be checked in the expected use range, with NIST traceable references where available. The acceptability for use or continued use shall be according to the needs of the analysis or application for which the equipment is being used.

e. Mechanical volumetric dispensing devices including burettes (except Class A glassware) shall be checked for accuracy on at least a quarterly use basis. Glass microliter syringes are to be considered in the same manner as Class A glassware, but shall come with a certificate attesting to established accuracy or the accuracy shall be initially demonstrated and documented by the laboratory.

f. For chemical tests, the temperature, cycle time and pressure of each run of autoclaves shall be documented by the use of appropriate chemical indicators or temperature recorders and pressure gauges.

g. For biological tests that employ autoclave sterilization, the following requirements apply:

(1) The performance of each autoclave shall be initially evaluated by establishing its functional properties and performance, for example heat distribution characteristics with respect to typical uses. Autoclaves shall meet specified temperature tolerances. Pressure cookers fitted only with a pressure gauge are not recommended for sterilization of media or decontamination of wastes.

(2) Records of autoclave operations including temperature and time shall be maintained. This shall be done for every cycle. Acceptance and rejection criteria shall be established and used to evaluate the autoclave efficiency and effectiveness.

2. Instrument calibration.

a. This standard specifies the essential elements that define the procedures and documentation for initial instrument calibration and continuing instrument calibration verification to ensure that the data shall be of known quality and be appropriate for a given regulation or decision. This standard does not specify detailed procedural steps for calibration, but establishes the essential elements for selection of the appropriate technique or techniques. If more stringent standards or requirements are included in a mandated test method or by regulation, the laboratory shall demonstrate that such requirements are met. If it is not apparent which standard is more stringent, then the requirements of the regulation or mandated test method are to be followed.

b. Initial instrument calibrations. The following items are essential elements of initial instrument calibration:

(1) The [laboratory shall include or reference the] details of the initial instrument calibration procedures, including calculations, integrations, acceptance criteria and associated statistics [shall be included or referenced] in the [test method] standard operating procedure [for the test method]. When initial instrument calibration procedures are referenced in the test method, then the [laboratory shall retain the] referenced material [shall be retained by the laboratory] and [be make it] available for review.

(2) [Sufficient] The laboratory shall retain sufficient [shall be retained] raw data records to permit reconstruction of the initial instrument calibration, e.g., calibration date, test method, instrument, analysis date, each analyte name, analyst's initials or signature, concentration and response, calibration curve or response factor, or unique equation or coefficient used to reduce instrument responses to concentration.

(3) Sample results shall be quantitated from the initial instrument calibration and may not be quantitated from any continuing instrument calibration verification

[unless otherwise required by regulation, method, or program] .

(4) All initial instrument calibrations shall be verified with a standard obtained from a second manufacturer or lot. Traceability shall be to a national standard, when available. This element does not apply to laboratories performing only simple test procedures.

(5) Criteria for the acceptance of an initial instrument calibration shall be established, e.g., correlation coefficient and relative percent difference. The criteria used shall be [appropriate to the technique employed 0.995 or greater for the calibration coefficient unless a different criterion is included in the method being used] .

(6) Results of samples not bracketed by initial calibration standards (within calibration range) shall be reported as having less certainty, e.g., defined qualifiers or flags or explained in the case narrative. The lowest calibration standard shall be above the detection limit.

(7) If the initial instrument calibration results are outside established acceptance criteria, corrective actions shall be performed. Data associated with an unacceptable initial instrument calibration shall not be reported.

(8) Calibration standards shall include concentrations at or below the regulatory limit or decision level, if these limits or levels are known by the laboratory, unless these concentrations are below the laboratory's demonstrated detection limits.

(9) If a reference or mandated method does not specify the number of calibration standards, the minimum number is two, not including blanks or a zero standard. The laboratory shall have a standard operating procedure for determining the number of points for establishing the initial instrument calibration.

c. Continuing instrument calibration verification.

(1) When an initial instrument calibration is not performed on the day of analysis, the validity of the initial calibration shall be verified prior to sample analyses by a continuing instrument calibration check with each analytical batch. This provision does not apply to laboratories performing only simple test procedures.

(2) The following items are essential elements of continuing instrument calibration verification:

(a) The [laboratory shall include or reference the] details of the continuing instrument calibration procedure, calculations and associated statistics [shall be included or referenced] in the [test method] standard operating procedure [for the test method] .

[(b) The laboratory shall verify calibration for each compound, element, or other discrete chemical species,

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except for multicomponent analytes such as Aroclors, Total Petroleum Hydrocarbons, or Toxaphene where a representative chemical related substance or mixture can be used.]

[~~(b) A~~ (c) The laboratory shall perform a] continuing instrument calibration [~~check shall be repeated at~~ verification as follows:

(1) At] the beginning and end of each analytical batch. [~~The concentrations of the calibration verification shall be varied within the established calibration range.~~] If an internal standard is used, only one [~~continuing instrument calibration~~] verification [~~shall be analyzed per analytical batch~~] needs to be performed at the beginning of the] analytical batch;

[(2) Whenever it is expected that the analytical system may be out of calibration or might not meet the verification acceptance criteria;

(3) If the time period for calibration or the most previous calibration verification has expired; or

(4) For analytical systems that contain a calibration verification requirement.]

[~~(c)~~ (d)] Sufficient raw data records shall be retained to permit reconstruction of the continuing instrument calibration verification, e.g., or test method, instrument, analysis date, each analyte name, concentration and response, calibration curve or response factor, or unique equations or coefficients used to convert instrument responses into concentrations. Continuing calibration verification records shall explicitly connect the continuing verification data to the initial instrument calibration.

[~~(d)~~ (e)] Criteria for the acceptance of a continuing instrument calibration verification shall be established, e.g., [percent recovery or] relative percent difference.

[~~(e)~~ (f)] If the continuing instrument calibration verification results obtained are outside established acceptance criteria, corrective actions shall be performed. If routine corrective action procedures fail to produce a second consecutive (immediate) calibration verification within acceptance criteria, then either the laboratory has to demonstrate [acceptable] performance after corrective action with two consecutive successful calibration verifications, or a new initial instrument calibration shall be performed. If the laboratory has not [~~demonstrated acceptable performance~~] verified calibration], sample analyses shall not occur until [~~a new initial calibration curve is established and verified~~] the analytical system is calibrated or calibration verified]. [~~However, sample data~~] If samples are analyzed using a system on which the calibration has not yet been verified, the results shall be flagged. Data]

associated with an unacceptable calibration verification may be [~~reported as qualified data~~ fully useable] under the following special conditions:

(i) When the acceptance criteria for the continuing calibration verification are exceeded high, i.e., high bias, and there are associated samples that are nondetects, then those nondetects may be reported. Otherwise the samples affected by the unacceptable calibration verification shall be reanalyzed after a new calibration curve has been established, evaluated and accepted.

(ii) When the acceptance criteria for the continuing calibration verification are exceeded low, i.e., low bias, those sample results may be reported if they exceed a maximum regulatory limit or decision level. Otherwise the samples affected by the unacceptable verification shall be reanalyzed after a new calibration curve has been established, evaluated and accepted.

1VAC30-45-750. [~~Essential quality control procedures~~ Quality assurance]:

[~~A. General.~~ The laboratory shall have quality control procedures for monitoring the validity of environmental tests undertaken. The resulting data shall be recorded in such a way that trends are detectable and, where practicable, statistical techniques shall be applied to the reviewing of the results. This monitoring shall be planned and reviewed and may include, but not be limited to, the following:

1. Regular use of certified reference materials and/or internal quality control using secondary reference materials.
2. Participation in interlaboratory comparison or proficiency testing program
3. Replicate tests using the same or different methods.
4. Retesting of retained samples.
5. Correlation of results for different characteristics of a sample (for example, total phosphate should be greater than or equal to orthophosphate).]

[~~A- B. Essential quality control procedures.~~] The general quality control principles in subsections [~~B C~~] through [~~E F~~] of this section shall apply, where applicable, to all environmental laboratories. The manner in which they are implemented is dependent on the types of tests performed by the laboratory. [1VAC30-45-760 through 1VAC30-45-829 specify quality control requirements for specific test types.] The standards for any given test type shall assure that the applicable principles are addressed.

[~~B- C.~~] All laboratories shall have detailed written protocols in place to monitor the following quality controls:

1. Positive and negative controls to monitor tests such as blanks, spikes, reference toxicants.

2. Tests to define the variability or repeatability of the laboratory results or both such as replicates.

3. Measures to assure the accuracy of the test method including calibration or continuing calibrations or both, use of certified reference materials, proficiency test samples, or other measures.

4. Measures to evaluate test method capability, such as method detection limits and quantitation limits or range of applicability such as linearity.

5. Selection of appropriate formulae to reduce raw data to final results such as regression analysis, comparison to internal and external standard calculations, and statistical analyses.

6. Selection and use of reagents and standards of appropriate quality.

7. Measures to assure the selectivity of the test for its intended purpose.

8. Measures to assure constant and consistent test conditions (both instrumental and environmental) where required by the test method such as temperature, humidity, light, or specific instrument conditions.

~~[C. All quality control measures shall be assessed and evaluated on an on going basis, and quality control acceptance criteria shall be used to determine the validity of the data.~~

~~D. The laboratory shall have procedures for the development of acceptance or rejection criteria where no method or regulatory criteria exist. (See 1VAC30-45-760 B.)~~

~~E. The laboratory shall ensure that the essential quality control standards and protocols listed in subsection B of this section and specified by mandated methods or regulations are incorporated into the laboratory's method manual and followed.]~~

1VAC30-45-760. [Quality control requirements.

A. General.

1. The quality control protocols specified by the laboratory's method manual shall be followed (1VAC30-45-730 C). The laboratory shall ensure that either the (i) applicable essential standards outlined in this section through 1VAC30-45-829 or (ii) mandated methods or regulations, whichever are more stringent, are incorporated into their method manuals. When it is not apparent which is more stringent, the quality control in the mandated method or regulations is to be followed.

2. All quality control measures shall be assessed and evaluated on an ongoing basis and quality control acceptance criteria shall be used to determine the validity of the data. The laboratory shall have procedures for the

development of acceptance/rejection criteria where no method or regulatory criteria exists.

B. Initial test method evaluation. For all test methods other than toxicity and microbiology, the requirements of subdivisions 1 and 2 of this subsection apply. For toxicity and microbiology testing, the initial test method evaluation requirements are contained in 1VAC30-45-780 through 1VAC30-45-788 and 1VAC30-45-790 through 1VAC30-45-798, respectively. For the evaluation of precision and bias (subdivision 3 of this subsection), the requirements of subdivision 3 a of this subsection apply to standard methods. The requirements of subdivision 3 b of this subsection apply to the methods referenced in that subdivision.

1. Limit of detection (LOD).

a. The laboratory shall determine the LOD for the method for each target analyte of concern in the quality system matrices. All sample processing steps of the analytical method shall be included in the determination of the LOD.

b. The validity of the LOD shall be confirmed by qualitative identification of the analyte(s) in a quality control sample in each quality system matrix containing the analyte at no more than two to three times the LOD for single analyte tests and one to four times the LOD for multiple analyte tests. This verification shall be performed on every instrument that is to be used for analysis of samples and reporting of data.

c. An LOD study is not required for any component for which spiking solutions or quality control samples are not available such as temperature, or, when test results are not to be reported to the LOD (versus the limit of quantitation or working range of instrument calibration), according to 1VAC30-45-771, 1VAC30-45-805, 1VAC30-45-814, and 1VAC30-45-826. Where an LOD study is not performed, the laboratory may not report a value below the limit of quantitation.

2. Limit of quantitation (LOQ).

a. The laboratory shall determine the LOQ for each analyte of concern according to a defined, documented procedure.

b. The LOQ study is not required for any component or property for which spiking solutions or quality control samples are not commercially available or otherwise inappropriate (e.g., pH).

c. The validity of the LOQ shall be confirmed by successful analysis of a QC sample containing the analytes of concern in each quality system matrix one to two times the claimed LOQ. A successful analysis is one where the recovery of each analyte is within the established test method acceptance criteria or client data

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quality objectives for accuracy. This single analysis is not required if the bias and precision of the measurement system is evaluated at the LOQ.

3. Evaluation of precision and bias.

a. Standard methods. The laboratory shall evaluate the precision and bias of a standard method for each analyte of concern for each quality system matrix according to either of the following:

(1) The single-concentration four-replicate recovery study procedures in 1VAC30-45-730 F, or

(2) An alternate procedure documented in the quality manual when the analyte cannot be spiked into the sample matrix and quality control samples are not commercially available.

b. Nonstandard methods.

(1) For laboratory-developed test methods or nonstandard test methods that were not in use by the laboratory before July 2003, the laboratory shall have a documented procedure to evaluate precision and bias. The laboratory shall also compare results of the precision and bias measurements with criteria given in the reference method or criteria established by the laboratory.

(2) Precision and bias measurements shall evaluate the method across the analytical calibration range of the method. The laboratory shall also evaluate precision and bias in the relevant quality system matrices and shall process the samples through the entire measurement system for each analyte of interest.

(3) The following are examples of a systematic approach to evaluate precision and bias:

(a) Example 1. Analyze QC samples in triplicate containing the analytes of concern at or near the limit of quantitation, at the upper-range of the calibration (upper 20%) and at a mid-range concentration. Process these samples on different days as three sets of samples through the entire measurement system for each analyte of interest. Each day one QC sample at each concentration is analyzed. A separate method blank shall be subjected to the analytical method along with the QC samples on each of the three days. (Note that the three samples at the LOQ concentration can demonstrate sensitivity as well.) For each analyte, calculate the mean recovery for each day, for each level over days, and for all nine samples. Calculate the relative standard deviation for each of the separate means obtained. Compare the standard deviations for the different days and the standard deviations for the different concentrations. If the different standard deviations are all statistically insignificant (e.g., F-test), then compare the overall mean and standard deviation with the established criteria from above.

(b) Example 2. A validation protocol such as the Tier I, Tier II, and Tier III requirements in U.S. EPA Office of Water's Alternate Test Procedure (ATP) approval process.

4. Evaluation of selectivity. The laboratory shall evaluate selectivity by following the checks established within the method. These checks may include mass spectral tuning, second column confirmation, ICP inter-element interference checks, chromatography retention time windows, sample blanks, spectrochemical absorption or fluorescence profiles, co-precipitation evaluations, and electrode response factors.

1VAC30-45-770. Chemical testing: positive and negative controls.

A. Negative control – method performance.

1. Purpose. The method blank is used to assess the preparation batch for possible contamination during the preparation and processing steps. The method blank shall be processed along with and under the same conditions as the associated samples to include all steps of the analytical procedure. Procedures shall be in place to determine if a method blank is contaminated. Any affected samples associated with a contaminated method blank shall be reprocessed for analysis or the results reported with appropriate data qualifying codes.

2. Frequency. The method blank shall be analyzed at a minimum of one per preparation batch. In those instances for which no separate preparation method is used (example: volatiles in water) the batch shall be defined as environmental samples that are analyzed together with the same method and personnel, using the same lots of reagents, not to exceed the analysis of 20 environmental samples.

3. Composition. The method blank shall consist of a quality system matrix that is similar to the associated samples and is known to be free of the analytes of interest.

4. Evaluation criteria and corrective action. While the goal is to have no detectable contaminants, each method blank shall be critically evaluated as to the nature of the interference and the effect on the analysis of each sample within the batch. The source of contamination shall be investigated and measures taken to minimize or eliminate the problem and affected samples reprocessed or data shall be appropriately qualified if:

a. The concentration of a targeted analyte in the blank is at or above the reporting limit as established by the test method or by regulation, and is greater than 1/10 of the amount measured in any sample.

b. The blank contamination otherwise affects the sample results as per the test method requirements or the individual project data quality objectives.

c. When a blank is determined to be contaminated, the cause shall be investigated and measures taken to minimize or eliminate the problem. Samples associated with a contaminated blank shall be evaluated as to the best corrective action for the samples (e.g. reprocessing or data qualifying codes). In all cases the corrective action shall be documented.

B. Positive control – method performance. Laboratory control sample (LCS).

1. Purpose. The LCS is used to evaluate the performance of the total analytical system, including all preparation and analysis steps. Results of the LCS are compared to established criteria and, if found to be outside of these criteria, indicates that the analytical system is "out of control." Any affected samples associated with an out of control LCS shall be reprocessed for re-analysis or the results reported with appropriate data qualifying codes.

2. Frequency. The LCS shall be analyzed at a minimum of one per preparation batch. Exceptions would be for those analytes for which no spiking solutions are available such as total suspended solids, total dissolved solids, total volatile solids, total solids, pH, color, odor, temperature, dissolved oxygen or turbidity. In those instances for which no separate preparation method is used (example: volatiles in water) the batch shall be defined as environmental samples that are analyzed together with the same method and personnel, using the same lots of reagents, not to exceed the analysis of 20 environmental samples.

3. Composition. The LCS is a quality system matrix, known to be free of analytes of interest, spiked with known and verified concentrations of analytes. NOTE: the matrix spike may be used in place of this control as long as the acceptance criteria are as stringent as for the LCS. Alternatively the LCS may consist of a media containing known and verified concentrations of analytes or as Certified Reference Material (CRM). All analyte concentrations shall be within the calibration range of the methods. The following shall be used in choosing components for the spike mixtures:

The components to be spiked shall be as specified by the mandated test method or other regulatory requirement or as requested by the client. In the absence of specified spiking components the laboratory shall spike per the following:

a. For those components that interfere with an accurate assessment such as spiking simultaneously with technical chlordane, toxaphene and PCBs, the spike should be chosen that represents the chemistries and elution patterns of the components to be reported.

b. For those test methods that have extremely long lists of analytes, a representative number may be chosen. The analytes selected should be representative of all analytes

reported. The following criteria shall be used for determining the minimum number of analytes to be spiked. However, the laboratory shall insure that all targeted components are included in the spike mixture over a two-year period. For methods that include 1-10 targets, spike all components; for methods that include 11-20 targets, spike at least 10% or 80%, whichever is greater; and for methods with more than 20 targets, spike at least 16 components.

4. Evaluation criteria and corrective action.

a. The results of the individual batch LCS are calculated in percent recovery or other appropriate statistical technique that allows comparison to established acceptance criteria. The laboratory shall document the calculation.

b. The individual LCS is compared to the acceptance criteria as published in the mandated test method. Where there are no established criteria, the laboratory shall determine internal criteria and document the method used to establish the limits or utilize client specified assessment criteria.

c. A LCS that is determined to be within the criteria effectively establishes that the analytical system is in control and validates system performance for the samples in the associated batch. Samples analyzed along with a LCS determined to be "out of control" shall be considered suspect and the samples reprocessed and re-analyzed or the data reported with appropriate data qualifying codes.

5. If a large number of analytes are in the LCS, it becomes statistically likely that a few will be outside control limits. This may not indicate that the system is out of control, therefore corrective action may not be necessary. Upper and lower marginal exceedance (ME) limits can be established to determine when corrective action is necessary. A ME is defined as being beyond the LCS control limit (3 standard deviations), but within the ME limits. ME limits are between 3 and 4 standard deviations around the mean.

a. The number of allowable marginal exceedances is based on the number of analytes in the LCS. If more analytes exceed the LCS control limits than is allowed, or if any one analyte exceeds the ME limits, the LCS fails and corrective action is necessary. This marginal exceedance approach is relevant for methods with long lists of analytes. It will not apply to target analyte lists with fewer than 11 analytes.

b. The number of allowable marginal exceedances is as follows:

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<u>Number of analytes in LCS</u>	<u>Number of analytes allowed in ME of the LCS control limit</u>
<u>Greater than 90</u>	<u>Five</u>
<u>71-90</u>	<u>Four</u>
<u>51-70</u>	<u>Three</u>
<u>31-50</u>	<u>Two</u>
<u>11-30</u>	<u>One</u>
<u>Fewer than 11</u>	<u>None</u>

c. Marginal exceedances shall be random. If the same analyte exceeds the LCS control limit repeatedly, it is an indication of a systemic problem. The source of the error shall be located and corrective action taken. Laboratories shall have a written procedure to monitor the application of marginal exceedance allowance to the LCS to ensure random behavior.

C. Sample specific controls - general.

1. The laboratory shall document procedures for determining the effect of the sample matrix on method performance. These procedures relate to the analyses of quality system matrix specific Quality Control (QC) samples and are designed as data quality indicators for a specific sample using the designated test method. These controls alone are not used to judge laboratory performance.

2. Examples of matrix specific QC include: Matrix Spike (MS); Matrix Spike Duplicate (MSD); sample duplicates; and surrogate spikes. The laboratory shall have procedures in place for tracking, managing, and handling matrix specific QC criteria including spiking appropriate components at appropriate concentrations, calculating recoveries and relative percent difference, evaluating and reporting results based on performance of the QC samples.

D. Sample specific controls - matrix spike and matrix spike duplicates.

1. Purpose. Matrix specific QC samples indicate the effect of the sample matrix on the precision and accuracy of the results generated using the selected method. The information from these controls is sample/matrix specific and would not normally be used to determine the validity of the entire batch.

2. Frequency. The frequency of the analysis of matrix specific samples shall be determined as part of a systematic planning process (e.g. Data Quality Objectives) or as specified by the test method.

3. Composition. The components to be spiked shall be as specified by the mandated test method. Any permit specified analytes, as specified by regulation or client

requested analytes shall also be included. If there are no specified components, the laboratory shall spike per the following:

a. For those components that interfere with an accurate assessment such as spiking simultaneously with technical chlordane, toxaphene and PCBs, the spike should be chosen that represents the chemistries and elution patterns of the components to be reported.

b. For those test methods that have extremely long lists of analytes, a representative number may be chosen using the following criteria for choosing the number of analytes to be spiked. However, the laboratory shall insure that all targeted components are included in the spike mixture over a two-year period.

(1) For methods that include 1-10 targets, spike all components;

(2) For methods that include 11-20 targets, spike at least 10% or 80%, whichever is greater;

(3) For methods with more than 20 targets, spike at least 16 components.

4. Evaluation criteria and corrective action.

a. The results from matrix spike/matrix spike duplicate are primarily designed to assess the precision and accuracy of analytical results in a given matrix and are expressed as percent recovery (%R), relative percent difference (RPD), or other appropriate statistical technique that allows comparison to established acceptance criteria. The laboratory shall document the calculation for %R, RPD or other statistical treatment used.

b. The results are compared to the acceptance criteria as published in the mandated test method. Where there are no established criteria, the laboratory shall determine internal criteria and document the method used to establish the limits. For matrix spike results outside established criteria corrective action shall be documented or the data reported with appropriate data qualifying codes.

E. Sample specific controls - matrix duplicates.

1. Purpose. Matrix duplicates are defined as replicate aliquots of the same sample taken through the entire analytical procedure. The results from this analysis indicate the precision of the results for the specific sample using the selected method. The matrix duplicate provides a usable measure of precision only when target analytes are found in the sample chosen for duplication.

2. Frequency. The frequency of the analysis of matrix duplicates may be determined as part of a systematic planning process (e.g. Data Quality Objectives) or as specified by the mandated test method.

3. Composition. Matrix duplicates are performed on replicate aliquots of actual samples. The composition is usually not known.

4. Evaluation criteria and corrective action.

a. The results from matrix duplicates are primarily designed to assess the precision of analytical results in a given matrix and are expressed as relative percent difference (RPD) or another statistical treatment (e.g., absolute differences). The laboratory shall document the calculation for relative percent difference or other statistical treatments.

b. Results are compared to the acceptance criteria as published in the mandated test method. Where there are no established criteria, the laboratory shall determine internal criteria and document the method used to establish the limits. For matrix duplicates results outside established criteria corrective action shall be documented or the data reported with appropriate data qualifying codes.

F. Sample specific controls - surrogate spikes.

1. Purpose. Surrogates are used most often in organic chromatography test methods and are chosen to reflect the chemistries of the targeted components of the method. Added prior to sample preparation/extraction, they provide a measure of recovery for every sample matrix.

2. Frequency. Except where the matrix precludes its use or when not commercially available, surrogate compounds shall be added to all samples, standards, and blanks for all appropriate test methods.

3. Composition. Surrogate compounds are chosen to represent the various chemistries of the target analytes in the method or MQO. They are often specified by the mandated method and are deliberately chosen for their being unlikely to occur as an environmental contaminant. Often this is accomplished by using deuterated analogs of select compounds.

4. Evaluation criteria and corrective action. The results are compared to the acceptance criteria as published in the mandated test method. Where there are no established criteria, the laboratory should determine internal criteria and document the method used to establish the limits. Surrogates outside the acceptance criteria shall be evaluated for the effect indicated for the individual sample results. Data quality objectives or other site-specific requirements may guide the appropriate corrective action. Results reported from analyses with surrogate recoveries outside the acceptance criteria should include appropriate data qualifiers.

1VAC30-45-771. Chemical testing: limit of detection and limit of quantitation.

A. General. All procedures used shall be documented. Documentation shall include the quality system matrix type. All supporting data shall be retained.

B. Limit of detection (LOD). The laboratory shall utilize a test method that provides an LOD that is appropriate and relevant for the intended use of the data. An LOD is not required for a test method when test results are not reported outside of the calibration range. LODs shall be determined by the protocol in the mandated test method or applicable regulation. If the protocol for determining LODs is not specified, the selection of the procedure shall reflect instrument limitations and the intended application of the test method.

1. The LOD shall be initially determined for the compounds of interest in each test method in a quality system matrix in which there are no target analytes or interferences at a concentration that would impact the results. Alternatively the LOD shall be determined in the quality system matrix of interest (see definition of matrix).

2. LODs shall be determined each time there is a change in the test method that affects how the test is performed, or when a change in instrumentation occurs that affects the sensitivity of the analysis.

3. The laboratory shall have established procedures to relate LOD with LOQ.

4. The LOD shall be verified annually for each quality system matrix, method and analyte according to the procedure specified in 1VAC30-45-760 B 1.

C. Limit of quantitation (LOQ).

1. Any established LOQ shall be above the LOD.

2. The LOQ shall be verified annually for each quality system matrix, method and analyte according to the procedure specified in 1VAC30-45-760 B 2. Alternatively, the annual LOQ verification is not required if the LOD is reevaluated or verified according to subdivision B 4 of this section.

1VAC30-45-772. Chemical testing: data reduction.

The procedures for data reduction, such as use of linear regression, shall be documented.

1VAC30-45-773. Chemical testing: quality of standards and reagents.

A. The source of standards shall comply with 1VAC30-45-740 C.

B. Reagent quality, water quality and checks.

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1. Reagents. In methods where the purity of reagents is not specified, analytical reagent grade shall be used. Reagents of lesser purity than those specified by the test method shall not be used. The labels on the container should be checked to verify that the purity of the reagents meets the requirements of the particular test method. Such information shall be documented.

2. Water. The quality of water sources shall be monitored and documented and shall meet method specified requirements.

3. The laboratory will verify the concentration of titrants in accordance with written laboratory procedures.

1VAC30-45-774. Chemical testing: selectivity.

A. The laboratory shall evaluate selectivity by following the checks established within the method, which may include mass spectral tuning, second column confirmation, ICP inter-element interference checks, chromatography retention time windows, sample blanks, spectrochemical absorption or fluorescence profiles, co-precipitation evaluations, and electrode response factors.

B. A confirmation shall be performed to verify the compound identification when positive results are detected on a sample from a location that has not been previously tested by the laboratory. Such confirmations shall be performed on organic tests such as pesticides, herbicides, or acid extractable or when recommended by the analytical test method except when the analysis involves the use of a mass spectrometer. Confirmation is required unless stipulated in writing by the client. All confirmation shall be documented.

C. The laboratory shall document acceptance criteria for mass spectral tuning.

1VAC30-45-775. Chemical testing: constant and consistent test conditions.

A. The laboratory shall assure that the test instruments consistently operate within the specifications required of the application for which the equipment is used.

B. Glassware cleaning. Glassware shall be cleaned to meet the sensitivity of the test method.

C. Any cleaning and storage procedures that are not specified by the test method shall be documented in laboratory records and SOPs.

1VAC30-45-780. Toxicity testing: general.

These standards apply to laboratories measuring the toxicity and/or bioaccumulation of contaminants in effluents (aquatic toxicity), receiving waters, sediments, elutriates, leachates and soils. In addition to the essential quality control standards set out in 1VAC30-45-781 through 1VAC30-45-788, some methods may have additional or other requirements based on factors such as the type of quality system matrix evaluated.

1VAC30-45-781. Toxicity testing: positive and negative controls.

A. Positive control. Reference toxicant tests demonstrate a laboratory's ability to obtain consistent results with the test method and evaluate the overall health and sensitivity of test organisms over time.

1. The laboratory shall demonstrate its ability to obtain consistent results with standard reference toxicants (SRT) and complete an initial Demonstration of Capability (DOC) in order to attain accreditation in toxicity testing methods.

a. An initial DOC shall consist of five or more acceptable SRT tests for each test method, species and endpoint with different batches of organisms. Appropriate negative controls (water, sediment, or soil) shall be tested at the frequency and duration specified in the test method. Initial DOCs shall be prepared in accordance with the requirements of 1VAC30-45-730 F.

b. Initial DOC is established by maintenance of SRT test results on control charts. A laboratory shall record the control performance and statistical endpoints (such as NOEC or ECp) for each method species and endpoint on control charts. Initial DOC is established where 95% of the test results required in subdivision A 1 a of this section fall within the control limits established in accordance with subdivision A 1 c of this section and meet test acceptability criteria (TAC). The laboratory shall evaluate precision (i.e., coefficient of variation (CV)) or sensitivity (i.e., statistical minimum significant difference (SMSD) measures; see subdivision A 1 d of this section) for these tests against method-specific or, lacking the former, laboratory-derived criteria to determine validity of the initial DOC.

c. For endpoints that are point estimates (ICp, ECp), control charts are constructed by plotting the cumulative mean and the control limits that consist of the upper and lower 95% confidence limits (+/- 2 standard deviations). In case of highly variable point estimates that exceed method-specific criteria, the control chart limits are adjusted accordingly. For endpoints from hypothesis tests (NOEC, NOAEC), the values are plotted directly and the control limits consist of one concentration interval above and below the concentration representing the central tendency (i.e., the mode).

d. For endpoints that are point estimates, the cumulative mean CV is calculated and for endpoints from hypothesis tests, the SMSD is calculated. These values are maintained on a control chart.

2. Ongoing laboratory performance shall be demonstrated by routine SRT testing for each test method and species and endpoint in accordance with the minimum frequency requirements specified in subdivision A 3 of this section.

- a. Intralaboratory precision is determined on an ongoing basis through the use of control charts as established in subdivision A 1 b of this section. The control charts shall be plotted as point estimate values, such as EC25 for chronic tests and LC50 for acute tests, or as appropriate hypothesis test values, such as the NOEC or NOAEC, over time within a laboratory.
- b. After initial laboratory DOC is determined, the control limits and CV for an individual test method, endpoints and species shall be adjusted as additional test results are obtained. After 20 data points are collected for a test method and species, the control chart is maintained using only the last 20 data points, i.e. each successive mean value and control limit is calculated using only the last 20 values.
- c. Control chart limits are expected to be exceeded occasionally regardless of how well a laboratory performs. Acceptance limits for point estimates (ICp, ECp) that are based on 95% confidence limits should theoretically be exceeded for one in 20 tests. Depending on the dilution factor and test sensitivity, control charts based on hypothesis test values (NOEC, NOAEC) may be expected to be exceeded on a similar frequency. Test results that fall outside of control chart limits at a frequency of 5.0% or less, or that fall just outside control chart limits (especially in the case of highly proficient laboratories that may develop relatively narrow acceptance limits over time), are not rejected de facto. Such data are evaluated in comparison with control chart characteristics including the width of the acceptance limits and the degree of departure of the value from acceptance limits.
- d. Consistent with the test methods used, laboratories shall develop acceptance/rejection policies for SRT data that consider the source of test organisms, the direction of the deviation, test dilution factor, test sensitivity (for hypothesis test values), testing frequency, out-of-control test frequency, relative width of acceptance limits, inter-test CV, and degree of difference between test results and acceptance limits.
- e. In the case of reference toxicant data that fails to meet control chart acceptance criteria, the test data are examined for defects, corrective action taken, and the test repeated if necessary, using a different batch of organisms or the data is qualified.
3. The frequency of ongoing laboratory reference toxicant testing shall be as follows unless the method specifically requires less frequent SRT tests (e.g., sediment tests):
- a. For test methods conducted at a frequency of monthly or greater, SRT tests shall be conducted at an ongoing frequency of monthly.
- b. For test methods and species commonly used in the laboratory, but that are tested at a frequency of less than monthly, SRT tests shall be conducted concurrently with the environmental test.
- c. If the test organisms are obtained from an outside source the sensitivity of each batch of organisms received from a supplier shall be determined via a concurrent SRT test unless the supplier can provide control chart data for the last five SRT tests using the same SRT and test conditions. Supplied SRT data may not be older than six months.
- d. The DOC for an analyst shall be consistent with 1VAC30-45-220 B but the frequency need not exceed the method-specified requirements and subdivision A 3 a and A 3 b of this section.
4. These standards do not currently specify a particular reference toxicant and dilution series. If the permitting authority identifies a reference toxicant or dilution series for a particular test, the laboratory shall follow the specified requirements. All reference toxicant tests conducted for a given test method and species shall use the same reference toxicant, test concentrations, dilution water and data analysis methods. A dilution factor of 0.5x or greater shall be used for both acute and chronic tests.
5. The reference toxicant tests shall be conducted following the same procedures as the environmental toxicity tests for which the precision is being evaluated, unless otherwise specified in the test method (for example, 10-day sediment tests employ 96-h water-only reference toxicant tests). The test duration, laboratory dilution water, feeding, organism age, range and density, test volumes, renewal frequency, water quality measurements, and the number of test concentrations, replicates and organisms per replicate shall be the same as specified for the environmental toxicity test.
- B. Negative control: control, brine control, control sediment, control soil or dilution water.
1. The standards for the use, type and frequency of testing of negative controls are specified by the test methods and by permit or regulation and shall be followed. A negative control is included with each test to evaluate test performance and the health and sensitivity of the specific batch of organisms.
2. Appropriate additional negative controls shall be included when sample adjustments (for example, addition of thiosulfate for dechlorination) or solvent carriers are used in the test.
3. Test acceptability criteria (TAC). The test acceptability criteria specified in the test method shall be achieved for both the reference toxicant and the effluent or environmental sample toxicity test. The criteria shall be

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calculated and shall meet the method specified requirements for performing toxicity tests.

1VAC30-45-782. Toxicity testing: variability and/or reproducibility.

Intralaboratory precision shall be determined on an ongoing basis through the use of further reference toxicant tests and related control charts as described in 1VAC30-45-840 A.

1VAC30-45-783. Toxicity testing: accuracy.

This principle is not applicable to toxicity testing.

1VAC30-45-784. Toxicity testing: test sensitivity.

A. The statistical minimum significant difference (SMSD) shall be calculated according to the formula specified by the test method and reported with the test results.

B. Point estimates: (LCp, ICp, or ECp) Confidence intervals shall be reported as a measure of the precision around the point estimate value, when the calculation is possible.

C. The SMSD shall be calculated and reported for only hypothesis test values, such as the NOEC or NOAEC.

1VAC30-45-785. Toxicity testing: selection of appropriate statistical analysis methods.

A. If required, methods of data analysis and endpoints are specified by language in the regulation, permit or the test method.

B. Dose response curves. The data shall be plotted in the form of a curve relating the dose of the chemical or concentration of sample to cumulative percentage of test organisms demonstrating a response such as death. Evaluation criteria shall be established for interpretation of concentration or dose response curves.

1VAC30-45-786. Toxicity testing: selection and use of reagents and standards.

A. The grade of all reagents used in toxicity tests is specified in the test method except the reference standard. All reference standards shall be prepared from chemicals that are analytical reagent grade or better. The preparation of all standards and reference toxicants shall be documented.

B. All standards and reagents associated with chemical measurements, such as dissolved oxygen, pH or specific conductance, shall comply with the standards outlined in 1VAC30-45-740 D 1 d.

C. Only reagent-grade water collected from distillation or deionization units is used to prepare reagents.

1VAC30-45-787. Toxicity testing: selectivity.

The permit or regulation specifies the selectivity of the test.

1VAC30-45-788. Toxicity testing: constant and consistent test conditions.

A. If closed refrigerator-sized incubators are used, culturing and testing of organisms shall be separated to avoid cross-contamination.

B. Laboratory space shall be adequate for the types and numbers of tests performed. The building shall provide adequate cooling, heating and illumination for conducting testing and culturing; hot and cold running water shall be available for cleaning equipment.

C. Air used for aeration of test solutions, dilution waters and cultures shall be free of oil and fumes.

D. The laboratory or a contracted outside expert shall positively identify test organisms to species on an annual basis. The taxonomic reference (citation and page(s)) and the names(s) of the taxonomic expert(s) shall be kept on file at the laboratory. When organisms are obtained from an outside source, the supplier shall provide this same information.

E. Instruments used for routine support measurements of chemical and physical parameters such as pH, DO, conductivity, salinity, alkalinity, hardness, chlorine, ammonia, and weight shall be calibrated, and/or standardized per manufacturer's instructions. As these are support measurements, only the calibration and verification requirements specified at 1VAC30-45-740 D 1 apply. All measurements and calibrations shall be documented.

F. Test temperature shall be maintained as specified for the test method. Temperature control equipment shall be adequate to maintain the required test temperature(s). The average daily temperature of the test solutions shall be maintained within the method-specified range. The minimum frequency of measurement shall be once per 24-hour period. The test temperature for continuous-flow toxicity tests shall be recorded and monitored continuously. Where electronic data loggers are used, temperature shall be monitored at a frequency sufficient to capture temporal variations of the environmental control system.

G. Reagent-grade water, prepared by any combination of distillation, reverse osmosis, ion exchange, activated carbon and particle filtration, shall meet the method specified requirements.

H. The quality of the standard dilution water used for testing or culturing shall be sufficient to allow satisfactory survival, growth and reproduction of the test species as demonstrated by routine reference toxicant tests and negative control performance. Water used for culturing and testing shall be analyzed for toxic metals and organics whenever the minimum acceptability criteria for control survival, growth or reproduction are not met and no other cause, such as contaminated glassware or poor stock, can be identified. It is recognized that the analyte lists of some methods manuals

may not include all potential toxicants, are based on estimates of chemical toxicity available at the time of publication and may specify detection limits that are not achievable in all matrices. However, for those analytes not listed, or for which the measured concentration or limit of detection is greater than the method-specified limit, the laboratory shall demonstrate that the analyte at the measured concentration or reported limit of detection does not exceed one-tenth of the expected chronic value for the most sensitive species tested and/or cultured. The expected chronic value is based on professional judgment and the best available scientific data. The "USEPA Ambient Water Quality Criteria Documents" and the EPA AQUIRE database provide guidance and data on acceptability and toxicity of individual metals and organic compounds.

I. The quality of the food used for testing or culturing shall be sufficient to allow satisfactory survival, growth and reproduction of the test species as demonstrated by routine reference toxicant tests and negative control performance. The laboratory shall have written procedures for the evaluation of food acceptance.

J. A subset of organisms used in bioaccumulation tests shall be analyzed at the start of the test (baseline) for the target compounds to be measured in the bioaccumulation tests.

K. Test chamber size and test solution volume shall be as specified in the test method. All test chambers used in a test shall be identical.

L. Test organisms shall be fed the quantity and type food or nutrients specified in the test method. They shall also be fed at the intervals specified in the test methods.

M. All organisms in a test shall be from the same source. Where available certified seeds are used for soil tests.

N. All organisms used in tests, or used as broodstock to produce neonate test organisms (for example cladocerans and larval fish), shall appear healthy, show no signs of stress or disease and exhibit acceptable survival (90% or greater) during the 24-hour period immediately preceding use in tests.

O. All materials used for test chambers, culture tanks, tubing, etc., and coming in contact with test samples, solutions, control water, sediment or soil or food shall be nontoxic and cleaned as described in the test methods. Materials shall not reduce or add to sample toxicity. Appropriate materials for use in toxicity testing and culturing are described in the referenced manuals.

P. Light intensity shall be maintained as specified in the methods manuals. Measurements shall be made and recorded on a yearly basis. Photoperiod shall be maintained as specified in the test methods and shall be documented at least quarterly. For algal and plant tests, the light intensity shall be measured and recorded at the start of each test.

Q. The testing laboratory shall document the health and culturing conditions of all organisms used for testing. Such documentation shall include culture conditions (e.g., salinity, hardness, temperature, pH) and observations of any stress, disease or mortality. When organisms are obtained from an outside source, the laboratory shall obtain written documentation of these water quality parameters and biological observations for each lot of organism received. These observations shall adequately address the 24-hour time period referenced in subsection N of this section. The laboratory shall also record each of these observations and water quality parameters upon the arrival of the organisms at the testing laboratory.

R. Age and the age range of the test organisms shall be as specified in the test method. Supporting information, such as hatch dates and times, times of brood releases and metrics (for example, chironomid head capsule width) shall be documented.

S. The maximum holding time of effluents (elapsed time from sample collection to first use in a test) shall not exceed 36 hours; samples may be used for renewal up to 72 hours after first use except as prescribed by the method and approved by the regulatory agency having authority for program oversight.

T. All samples shall be chilled to 0 to 6°C during or immediately after collection except as prescribed by the method.

U. Organisms used in a given test shall be from the same batch.

V. All tests shall have the minimum number of replicates per treatment as prescribed by the method.

W. The control population of Ceriodaphnia in chronic effluent or receiving water tests shall contain no more than 20% males.

X. The culturing of *C. dubia* shall be adequate such that blocking by parentage can be established.

Y. Dissolved oxygen and pH in aquatic tests shall be within acceptable range at test initiation and aeration (minimal) is provided to tests if, and only if, acceptable dissolved oxygen concentrations cannot be otherwise maintained or if specified by the test method.

Z. Test soils or sediments shall be within the geochemical tolerance range of the test organism.

AA. An individual test may be conditionally acceptable if temperature, dissolved oxygen, pH and other specified conditions fall outside specifications, depending on the degree of the departure and the objectives of the tests (see test conditions and test acceptability criteria specified for each test method).

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1VAC30-45-789. (Reserved.)

1VAC30-45-790. Microbiology testing: general.

These standards apply to laboratories undertaking microbiological analysis of environmental samples. Microbiological testing refers to and includes the detection, isolation, enumeration, or identification of microorganisms and/or their metabolites, or determination of the presence or absence of growth in materials and media.

1VAC30-45-791. Microbiology testing: sterility checks and blanks, positive and negative controls.

A. Sterility checks and blanks. The laboratory shall demonstrate that the filtration equipment and filters, sample containers, media and reagents have not been contaminated through improper handling or preparation, inadequate sterilization, or environmental exposure.

1. A sterility blank shall be analyzed for each lot of pre-prepared, ready-to-use medium (including chromofluorogenic reagent) and for each batch of medium prepared in the laboratory. This shall be done prior to first use of the medium.

2. For filtration technique, the laboratory shall conduct one beginning and one ending sterility check for each laboratory sterilized filtration unit used in a filtration series. The filtration series may include single or multiple filtration units, which have been sterilized prior to beginning the series. For presterilized single use funnels a sterility check shall be performed on one funnel per lot. The filtration series is considered ended when more than 30 minutes elapses between successive filtrations. During a filtration series, filter funnels shall be rinsed with three 20-30 ml portions of sterile rinse water after each sample filtration. In addition, laboratories shall insert a sterility blank after every 10 samples or sanitize filtration units by UV light after each sample filtration.

3. For pour plate technique, sterility blanks of the medium shall be made by pouring, at a minimum, one uninoculated plate for each lot of pre-prepared, ready-to-use media and for each batch of medium prepared in the laboratory.

4. Sterility checks on sample containers shall be performed on at least one container for each lot of purchased, presterilized containers. For containers prepared and sterilized in the laboratory, a sterility check shall be performed on one container per sterilized batch with nonselective growth media.

5. A sterility blank shall be performed on each batch of dilution water prepared in the laboratory and on each batch of pre-prepared, ready-to-use dilution water with nonselective growth media.

6. At least one filter from each new lot of membrane filters shall be checked for sterility with nonselective growth media.

B. Positive controls.

1. Positive culture controls demonstrate that the medium can support the growth of the target organism(s), and that the medium produces the specified or expected reaction to the target organism(s).

2. Each preprepared, ready-to-use lot of medium (including chromofluorogenic reagent) and each batch of medium prepared in the laboratory shall be tested and demonstrate a known positive response. This shall be done prior to first use of the medium.

C. Negative controls. The provisions of this subsection shall not apply to wastewater treatment plants.

1. Negative culture controls demonstrate that the medium does not support the growth of non-target organisms or does not demonstrate the typical positive reaction of the target organism(s).

2. Each pre-prepared, ready-to-use lot of selective medium (including chromofluorogenic reagent) and each batch of selective medium prepared in the laboratory shall be analyzed with one or more known negative culture controls, i.e. nontarget organisms, as appropriate to the method. This shall be done prior to first use of the medium.

1VAC30-45-792. Microbiology testing: test variability and reproducibility.

For test methods that specify colony counts such as membrane filter or plated media, duplicate counts shall be performed monthly on one positive sample, for each month that the test is performed. If the lab has two or more analysts, each analyst shall count typical colonies on the same plate. Counts shall be within 10% difference to be acceptable. In a laboratory with only one microbiology analyst, the analyst shall count the same plate twice, with no more than 5.0% difference between the counts.

1VAC30-45-793. Microbiology testing: method evaluation.

A. Laboratories are required to demonstrate proficiency with the test method prior to first use. This shall be achieved by comparison to a method already approved for use in the laboratory, or by analyzing a minimum of 10 spiked samples whose quality system matrix is representative of those normally submitted to the laboratory, or by analyzing and passing one proficiency test series provided by an approved proficiency sample provider. The laboratory shall maintain this documentation as long as the method is in use and for at least five years past the date of last use.

B. Laboratories shall participate in the proficiency test programs required by Article 3 (1VAC30-45-500 et seq.).

The results of these analyses shall be used to evaluate the ability of the laboratory to produce acceptable data.

1VAC30-45-794. Microbiology testing: test performance.

A. All growth and recovery media shall be checked to assure that the target organism(s) respond in an acceptable and predictable manner (see 1VAC30-45-791 B).

B. To ensure that analysis results are accurate, target organism identity shall be verified as specified in the method, e.g., by use of the completed test, or by use of secondary verification tests such as a catalase test.

1VAC30-45-795. Microbiology testing: data reduction.

The calculations, data reduction and statistical interpretations specified by each test method shall be followed.

1VAC30-45-796. Microbiology testing: quality of standards, reagents and media.

A. The laboratory shall ensure that the quality of the reagents and media used is appropriate for the test concerned.

B. Culture media may be prepared from commercial dehydrated powders or may be purchased ready to use. The laboratory may prepare media from basic ingredients when commercial media are not available or when it can be demonstrated that commercial media do not provide adequate results. Media prepared by the laboratory from basic ingredients shall be tested for performance (e.g., for selectivity, sensitivity, sterility, growth promotion, growth inhibition) prior to first use. Detailed testing criteria information shall be defined in either the laboratory's test methods, SOPs, quality manual, or similar documentation.

C. Reagents, commercial dehydrated powders and media shall be used within the shelf-life of the product and shall be documented according to 1VAC30-45-730 J.

D. Distilled water, deionized water or reverse osmosis produced water free from bactericidal and inhibitory substances shall be used in the preparation of media, solutions and buffers. The quality of the water shall be monitored for chlorine residual, specific conductance, and heterotrophic bacteria plate count monthly (when in use), when maintenance is performed on the water treatment system, or at startup after a period of disuse longer than one month.

E. Analysis for metals and the Bacteriological Water Quality Test (to determine presence of toxic agents or growth promoting substances) shall be performed annually. Results of these analyses shall meet the specifications of the required method and records of analyses shall be maintained for three years. (An exception to performing the Bacteriological Water Quality Test shall be given to laboratories that can supply documentation to show that their water source meets the

criteria, as specified by the method, for Type I or Type II reagent water.)

F. Media, solutions and reagents shall be prepared, used and stored according to a documented procedure following the manufacturer's instructions or the test method. Documentation for media prepared in the laboratory shall include date of preparation, preparer's initials, type and amount of media prepared, manufacturer and lot number, final pH of the media, and expiration date. Documentation for media purchased pre-prepared, ready to use shall include manufacturer, lot number, type and amount of media received, date of receipt, expiration date of the media, and pH of the media.

1VAC30-45-797. Microbiology testing: selectivity.

In order to ensure identity and traceability, reference cultures used for positive and negative controls shall be obtained from a recognized national collection, organization, or manufacturer. Microorganisms may be single use preparations or cultures maintained by documented procedures that demonstrate the continued purity and viability of the organism.

1. Reference cultures may be revived (if freeze-dried) or transferred from slants and subcultured once to provide reference stocks. The reference stocks shall be preserved by a technique that maintains the characteristics of the strains. Reference stocks shall be used to prepare working stocks for routine work. If reference stocks have been thawed, they shall not be refrozen and reused.

2. Working stocks shall not be sequentially cultured more than five times and shall not be subcultured to replace reference stocks.

1VAC30-45-798. Microbiology testing: constant and consistent test conditions.

A. Laboratory facilities. Floors and work surfaces shall be nonabsorbent and easy to clean and disinfect. Work surfaces shall be adequately sealed. Laboratories shall provide sufficient storage space, and shall be clean and free from dust accumulation. Plants, food, and drink shall be prohibited from the laboratory work area.

B. Laboratory equipment.

1. Temperature measuring devices. Temperature measuring devices such as liquid-in-glass thermometers, thermocouples, and platinum resistance thermometers used in incubators, autoclaves and other equipment shall be the appropriate quality to meet specification(s) in the test method. The graduation of the temperature measuring devices shall be appropriate for the required accuracy of measurement and they shall be calibrated to national or international standards for temperature (see 1VAC30-45-740 C). Calibration shall be done at least annually.

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2. Autoclaves.

a. The performance of each autoclave shall be initially evaluated by establishing its functional properties and performance, for example, heat distribution characteristics with respect to typical uses. Autoclaves shall meet specified temperature tolerances. Pressure cookers shall not be used for sterilization of growth media.

b. Demonstration of sterilization temperature shall be provided by use of continuous temperature recording device or by use of a maximum registering thermometer with every cycle. Appropriate biological indicators shall be used once per month to determine effective sterilization. Temperature sensitive tape shall be used with the contents of each autoclave run to indicate that the autoclave contents have been processed.

c. Records of autoclave operations shall be maintained for every cycle. Records shall include date, contents, maximum temperature reached, pressure, time in sterilization mode, total run time (may be recorded as time in and time out) and analyst's initials.

d. Autoclave maintenance, either internally or by service contract, shall be performed annually and shall include a pressure check and calibration of temperature device. Records of the maintenance shall be maintained in equipment logs.

e. The autoclave mechanical timing device shall be checked quarterly against a stopwatch and the actual time elapsed documented.

3. Volumetric equipment. Volumetric equipment shall be calibrated as follows:

a. Equipment with movable parts such as automatic dispensers, dispensers/diluters, and mechanical hand pipettes shall be verified for accuracy quarterly.

b. Equipment such as filter funnels, bottles, nonclass A glassware, and other marked containers shall be calibrated once per lot prior to first use.

c. The volume of the disposable volumetric equipment such as sample bottles and disposable pipettes shall be checked once per lot.

4. UV instruments. UV instruments used for sanitization shall be tested quarterly for effectiveness with an appropriate UV light meter or by plate count agar spread plates. Replace bulbs if output is less than 70% of original for light tests or if count reduction is less than 99% for a plate containing 200 to 300 organisms.

5. Conductivity meters, oxygen meters, pH meters, hygrometers, and other similar measurement instruments shall be calibrated according to the method specified requirements (see 1VAC30-45-740 D 1 d).

6. Incubators, water baths, and ovens.

a. The stability and uniformity of temperature distribution and time required after test sample addition to reestablish equilibrium conditions in incubators and water baths shall be established. Temperature of incubators and water baths shall be documented twice daily, at least four hours apart, on each day of use.

b. Ovens used for sterilization shall be checked for sterilization effectiveness monthly with appropriate biological indicators. Records shall be maintained for each cycle that include date, cycle time, temperature, contents and analyst's initials.

7. Labware (glassware and plasticware).

a. The laboratory shall have a documented procedure for washing labware, if applicable. Detergents designed for laboratory use shall be used.

b. Glassware shall be made of borosilicate or other noncorrosive material, free of chips and cracks, and shall have readable measurement marks.

c. Labware that is washed and reused shall be tested for possible presence of residues that may inhibit or promote growth of microorganisms by performing the Inhibitory Residue Test annually, and each time the lab changes the lot of detergent or washing procedures.

d. Washed labware shall be tested at least once daily, each day of washing, for possible acid or alkaline residue by testing at least one piece of labware with a suitable pH indicator such as bromothymol blue. Records of tests shall be maintained.

1VAC30-45-800. Radiochemical testing: general.

These standards apply to laboratories undertaking the examination of environmental samples by radiochemical analysis. These procedures for radiochemical analysis may involve some form of chemical separation followed by detection of the radioactive decay of analyte (or indicative daughters) and tracer isotopes where used. For the purpose of these standards, procedures for the determination of radioactive isotopes by mass spectrometry (e.g., ICP-MS or TIMS) or optical (e.g., KPA) techniques are not addressed herein.

1VAC30-45-801. Radiochemical testing: negative and positive controls.

A. Negative controls.

1. Method blank shall be performed at a frequency of one per preparation batch. The results of this analysis shall be one of the quality control measures to be used to assess the batch. The method blank result shall be assessed against the specific acceptance criteria specified in the laboratory method manual. When the specified method blank

acceptance criteria is not met, the specified corrective action and contingencies shall be followed and results reported with appropriate data qualifying codes. The occurrence of a failed method blank acceptance criteria and the actions taken shall be noted in the laboratory report.

2. In the case of gamma spectrometry, generally a nondestructive analysis, a method blank shall be prepared using a calibrated counting geometry similar to that used for the samples. The container of the appropriate geometry can be empty or filled to similar volume to partially simulate gamma attenuation due to a sample matrix.

3. There shall be no subtraction of the required method blank result from the sample results in the associated preparation or analytical batch unless permitted by method or program. This does not preclude the application of any correction factor (e.g. instrument background, analyte presence in tracer, reagent impurities, peak overlap, etc.) to all analyzed samples, both program/project submitted and internal quality control samples. However, these correction factors shall not depend on the required method blank result in the associated analytical batch.

4. The method blank sample shall be prepared with similar aliquot size to that of the routine samples for analysis and the method blank result and acceptance criteria shall be calculated in a manner that compensates for sample results based upon differing aliquot size.

B. Positive controls.

1. Laboratory control samples shall be performed at a frequency of one per preparation batch. The results of this analysis shall be one of the quality control measures to be used to assess the batch. The laboratory control sample result shall be assessed against the specific acceptance criteria specified in the laboratory method manual. When the specified laboratory control sample acceptance criteria is not met the specified corrective action and contingencies shall be followed. The occurrence of a failed laboratory control sample acceptance criteria and the actions taken shall be noted in the laboratory report.

2. Matrix spike shall be performed at a frequency of one per preparation batch for those methods that include a chemical separation process without the use of an internal standard or carrier, and where there is sufficient sample to do so. Although gross alpha, gross beta and tritium measurements do not involve a chemical separation process, matrix spikes shall be performed for these analyses on aqueous samples. The results of this analysis shall be one of the quality control measures to be used to assess the batch. The matrix spike result shall be assessed against the specific acceptance criteria specified in the laboratory method manual. When the specified matrix spike acceptance criteria is not met, the specified corrective action and contingencies shall be followed. The

occurrence of a failed matrix spike acceptance criteria and the actions taken shall be noted in the laboratory report. The lack of sufficient sample aliquot size to perform a matrix spike shall be noted in the laboratory report.

3. The activity of the laboratory control sample shall (i) be at least five times the limit of detection and (ii) at a level comparable to that of routine samples when such information is available if the sample activities are expected to exceed five times the limit of detection.

4. The activity of the matrix spike analytes(s) shall be greater than five times the limit of detection.

5. The laboratory standards used to prepare the laboratory control sample and matrix spike shall be from a source independent of the laboratory standards used for instrument calibration and shall meet the requirements for reference standards provided in 1VAC30-45-807 A.

6. The matrix spike shall be prepared by adding a known activity of target analyte after subsampling if required but before any chemical treatment (e.g., chemical digestion, dissolution, separation, etc.). Where a radiochemical method, other than gamma spectroscopy, has more than one reportable analyte isotope (e.g., plutonium, Pu 238 and Pu 239, using alpha spectrometry), only one of the analyte isotopes need be included in the laboratory control or matrix spike sample at the indicated activity level. However, where more than one analyte isotope is present above the specified limit of detection, each shall be assessed against the specified acceptance criteria.

7. Where gamma spectrometry is used to identify and quantitate more than one analyte isotope, the laboratory control sample shall contain isotopes that represent the low (e.g., americium-241), medium (e.g., cesium-137) and high (e.g., cobalt-60) energy range of the analyzed gamma spectra. As indicated by these examples the isotopes need not exactly bracket the calibrated energy range or the range over which isotopes are identified and quantitated.

8. The laboratory control sample shall be prepared with similar aliquot size to that of the routine samples for analyses.

C. Other controls.

1. Tracer. For those methods that utilize a tracer (i.e., internal standard) each sample result shall have an associated tracer recovery calculated and reported. The tracer shall be added to the sample after subsampling if required but before any chemical treatment (e.g., chemical digestion, dissolution, separation, etc.) unless otherwise specified by the method. The tracer recovery for each sample result shall be one of the quality control measures to be used to assess the associated sample result acceptance. The tracer recovery shall be assessed against the specific acceptance criteria specified in the laboratory

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method manual. When the specified tracer recovery acceptance criteria is not met the specified corrective action and contingencies shall be followed. The occurrence of a failed tracer recovery acceptance criteria and the actions taken shall be noted in the laboratory report.

2. Carrier. For those methods that utilize a carrier for recovery determination, each sample shall have an associated carrier recovery calculated and reported. The carrier shall be added to the sample after subsampling if required but before any chemical treatment (e.g., chemical digestion, dissolution, separation, etc.) unless otherwise specified by the method. The carrier recovery for each sample shall be one of the quality control measures to be used to assess the associated sample result acceptance. The carrier recovery shall be assessed against the specific acceptance criteria specified in the laboratory method manual. When the specified carrier recovery acceptance criteria is not met the specified corrective action and contingencies shall be followed. The occurrence of a failed carrier recovery acceptance criteria and the actions taken shall be noted in the laboratory report.

1VAC30-45-802. Radiochemical testing: analytical variability/reproducibility.

A. Replicate shall be performed at a frequency of one per preparation batch where there is sufficient sample to do so. The results of this analysis shall be one of the quality control measures to be used to assess batch acceptance. The replicate result shall be assessed against the specific acceptance criteria specified in the laboratory method manual. When the specified replicate acceptance criteria is not met the specified corrective action and contingencies shall be followed. The occurrence of a failed replicate acceptance criteria and the actions taken shall be noted in the laboratory report.

B. For low level samples (less than approximately three times the limit of detection) the laboratory may analyze duplicate laboratory control samples or a replicate matrix spike (matrix spike and a matrix spike duplicate) to determine reproducibility within a preparation batch.

1VAC30-45-803. Radiochemical testing: method evaluation.

In order to ensure the accuracy of the reported result, the following procedures shall be in place:

1. Initial demonstration of capability shall be performed initially (prior to the analysis of any samples) and with a significant change in instrument type (e.g., different detection technique), personnel or method.

2. Proficiency test samples. The laboratory shall use the results of such analysis to evaluate its ability to produce accurate data.

1VAC30-45-804. Radiochemical testing: radiation measurement instrumentation.

A. General. Because of the stability and response nature of modern radiation measurement instrumentation, it is not typically necessary to verify calibrate these systems each day of use. However, verification of calibration is required as outlined in subsection B of this section. This section addresses those practices that are necessary for proper calibration and those requirements of 1VAC30-45-740 D (instrument calibrations) that are not applicable to some types of radiation measurement instrumentation.

B. Instrument calibration.

1. Given that activity detection efficiency is independent of sample activity at all but extreme activity levels, the requirements of 1VAC30-45-740 D 2 b (7) are not applicable to radiochemical method calibrations except mass attenuation in gas-proportional counting and sample quench in liquid scintillation counting. Radiation measurement instruments are subject to calibration prior to initial use, when the instrument is placed back in service after malfunctioning and the instrument's response has changed as determined by a performance check or when the instrument's response exceeds predetermined acceptance criteria for the instrument quality control.

2. Instrument calibration shall be performed with reference standards as defined in 1VAC30-45-807 A. The standards shall have the same general characteristics (i.e., geometry, homogeneity, density, etc.) as the associated samples.

3. The frequency of calibration shall be addressed in the laboratory method manual if not specified in the method. A specific frequency (e.g., monthly) or observations from the associated control or tolerance chart, as the basis for calibration shall be specified.

C. Continuing instrument calibration verification (performance checks). Performance checks shall be performed using appropriate check sources and monitored with control charts or tolerance charts to ensure that the instrument is operating properly and that the detector response has not significantly changed and, therefore, the instrument calibration has not changed. The same check source used in the preparation of the tolerance chart or control chart at the time of calibration shall be used in the calibration verification of the instrument. The check sources shall provide adequate counting statistics for a relatively short count time and the source should be sealed or encapsulated to prevent loss of activity and contamination of the instrument and laboratory personnel.

1. For gamma spectroscopy systems, the performance checks for efficiency and energy calibration shall be performed on a day-of-use basis along with performance checks on peak resolution.

2. For alpha spectroscopy systems, the performance check for energy calibration shall be performed on a weekly basis and the performance check for counting efficiency shall be performed on at least a monthly basis.

3. For gas-proportional and liquid scintillation counters, the performance check for counting efficiency shall be performed on a day-of-use basis. For batches of samples that uninterruptedly count for more than a day a performance check can be performed at the beginning and end of the batch as long as this time interval is no greater than one week. Verification of instrument calibration does not directly verify secondary calibrations, e.g., the mass efficiency curve or the quench curve.

4. For scintillation counters the calibration verification for counting efficiency shall be performed on a day of use basis.

D. Background measurement. Background measurements shall be made on a regular basis and monitored using control charts or tolerance charts to ensure that a laboratory maintains its capability to meet required data quality objectives. These values may be subtracted from the total measured activity in the determination of the sample activity.

1. For gamma spectroscopy systems, background measurements shall be performed on at least a monthly basis.

2. For alpha spectroscopy systems, background measurements shall be performed on at least a monthly basis.

3. For gas-proportional counters, background measurements shall be performed on at least on a weekly basis.

4. For scintillation counters, background measurements shall be performed each day of use.

E. Instrument contamination monitoring. The laboratory shall have a written procedure for monitoring radiation measurement instrumentation for radioactive contamination. The procedure shall indicate the frequency of the monitoring and shall indicate criteria, which initiates corrective action.

1VAC30-45-805. Radiochemical testing: Minimum detectable activity (MDA)/Minimum detectable concentration (MDC)/Lower level of detection (LLD).

A. MDA/MDC/LLD shall be determined prior to sample analysis and shall be redetermined each time there is a significant change in the test method or instrument type.

B. The procedures employed shall be documented and consistent with mandated method or regulation.

1VAC30-45-806. Radiochemical testing: data reduction.

A. The requirements of 1VAC30-45-730 K apply.

B. Measurement uncertainties. Each result shall be reported with the associated measurement uncertainty. The procedures for determining the measurement uncertainty shall be documented and be consistent with mandated method and regulation.

1VAC30-45-807. Radiochemical testing: quality of standards and reagents.

A. The quality control program shall establish and maintain provisions for radionuclide standards.

1. Reference standards that are used in a radiochemical laboratory shall be obtained from the National Institute of Standards and Technology (NIST), or suppliers who participate in supplying NIST standards or NIST traceable radionuclides. Any reference standards purchased outside the United States shall be traceable back to each country's national standards laboratory. Commercial suppliers of reference standards shall conform to ANSI N42.22 to assure the quality of their products.

2. Reference standards shall be accompanied with a certificate of calibration whose content is as described in ANSI N42.22 - 1995, Section 8, Certificates.

3. Laboratories should consult with the supplier if the laboratory's verification of the activity of the reference traceable standard indicates a noticeable deviation from the certified value. The laboratory shall not use a value other than the decay corrected certified value. The laboratory shall have a written procedure for handling, storing and establishment of expiration dates for reference standards.

B. All reagents used shall be analytical reagent grade or better.

1VAC30-45-808. Radiochemical testing: constant and consistent test conditions.

The laboratory shall maintain a radiological control program that addresses analytical radiological control. The program shall address the procedures for segregating samples with potentially widely varying levels of radioactivity. The radiological control program shall explicitly define how low level and high level samples will be identified, segregated and processed in order to prevent sample cross-contamination. The radiological control program shall include the measures taken to monitor and evaluate background activity or contamination on an ongoing basis.

1VAC30-45-809. (Reserved).

1VAC30-45-810. Air testing: general.

These standards shall apply to samples that are submitted to a laboratory for the purpose of analysis. They do not apply to field activities such as source air emission measurements or the use of continuous analysis devices.

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1VAC30-45-811. Air testing: negative and positive controls.

A. Negative controls.

1. Method blanks shall be performed at a frequency of at least one per batch of 20 environmental samples or less per sample preparation method. The results of the method blank analysis shall be used to evaluate the contribution of the laboratory provided sampling media and analytical sample preparation procedures to the amount of analyte found in each sample. If the method blank result is greater than the limit of quantitation and contributes greater than 10% of the total amount of analyte found in the sample, the source of the contamination shall be investigated and measures taken to eliminate the source of contamination. If contamination is found, the data shall be qualified in the report.

2. Collection efficiency. Sampling trains consisting of multiple sections (e.g., filters, sorbent tubes, impingers) that are received intact by the laboratory shall be separated into "front" and "back" sections if required by the client. Each section shall be processed and analyzed separately and the analytical results reported separately.

B. Positive controls. Laboratory control sample (LCS) shall be analyzed at a rate of at least one per batch of 20 or fewer samples per sample preparation method for each analyte. If a spiking solution is not available, a calibration solution whose concentration approximates that of the samples shall be included in each batch and with each lot of media. If a calibration solution must be used for the LCS, the client will be notified prior to the start of analysis. The concentration of the LCS shall be relevant to the intended use of the data and either at a regulatory limit or below it.

C. Surrogates shall be used as required by the test method.

D. Matrix spike shall be used as required by the test method.

1VAC30-45-812. Air testing: analytical variability/reproducibility.

Matrix spike duplicates (MSDs) or laboratory duplicates shall be analyzed at a minimum of one in 20 samples per sample batch. The laboratory shall document their procedure to select the use of appropriate types of spikes and duplicates. The selected samples(s) shall be rotated among sampling points or sampling locations so that various sample matrix problems may be noted and/or addressed. Poor performance in the spikes and duplicates may indicate a problem with the sample composition and shall be reported to the client.

1VAC30-45-813. Air testing: method evaluation.

In order to ensure the accuracy of the reported result, the following procedures shall be in place:

1. Demonstration of capability shall be performed prior to the analysis of any samples and with a significant change

in instrument type, personnel, quality system matrix, or test method.

2. Calibration. Calibration protocols specified in 1VAC30-45-740 shall be followed.

3. Proficiency test samples. The results of such analyses shall be used by the laboratory to evaluate the ability of the laboratory to produce accurate data.

1VAC30-45-814. Air testing: limit of detection.

The requirements of 1VAC30-45-771 shall apply.

1VAC30-45-815. Air testing: data reduction.

The procedures for data reduction, such as use of linear regression, shall be documented.

1VAC30-45-816. Air testing: quality of standards and reagents.

A. The source of standards shall comply with 1VAC30-45-740 C.

B. The purity of each analyte standard and each reagent shall be documented by the laboratory through certificates of analyses from the manufacturer/vendor, manufacturer/vendor specifications, and/or independent analysis.

C. In methods where the purity of reagents is not specified, analytical reagent grade or higher quality, if available, shall be used.

1VAC30-45-817. Air testing: selectivity.

The laboratory shall develop and document acceptance criteria for test method selectivity such as absolute and relative retention times, wavelength assignments, mass spectral library quality of match, and mass spectral tuning.

1VAC30-45-818. Air testing: constant and consistent test conditions.

A. The laboratory shall assure that the test instruments consistently operate within the specifications required of the application for which the equipment is used.

B. The laboratory shall document that all sampling equipment, containers and media used or supplied by the laboratory meet required test method criteria.

C. If supplied or used by the laboratory, procedures for field equipment decontamination shall be developed and their use documented.

D. The laboratory shall have a documented program for the calibration and verification of sampling equipment such as pumps, meter boxes, critical orifices, flow measurement devices and continuous analyzers, if these equipment are used or supplied by the laboratory.

1VAC30-45-819. (Reserved).**1VAC30-45-820. Asbestos testing: general.**

These standards apply to laboratories undertaking the examination of asbestos samples. These standards are organized by analytical technique, including transmission electron microscopy (TEM) for the analysis of water, wastewater, air, and bulk samples; phase contrast microscopy (PCM) for analysis of workplace air; and polarized light microscopy (PLM) for analysis of bulk samples. These procedures for asbestos analysis involve sample preparation followed by detection of asbestos. If NIST SRMs specified below are unavailable, the laboratory may substitute an equivalent reference material with a certificate of analysis.

1VAC30-45-821. Asbestos testing: negative controls.**A. Transmission electron microscopy.****1. Water and wastewater.**

a. Blank determinations shall be made prior to sample collection. When using polyethylene bottles, one bottle from each batch, or a minimum of one from each 24 shall be tested for background level. When using glass bottles, four bottles from each 24 shall be tested. An acceptable bottle blank level is defined as <0.01 MFL $> 10\mu\text{m}$. (EPA/600/R-94/134, Method 100.2, Section 8.2)

b. A process blank sample consisting of fiber-free water shall be run before the first field sample. The quantity of water shall be ≥ 10 mL for a 25-mm diameter filter and ≥ 50 mL for a 47-mm diameter filter. (EPA /600/R-94/134, Method 100.2, Section 11.8)

2. Air.

a. A blank filter shall be prepared with each set of samples. A blank filter shall be left uncovered during preparation of the sample set and a wedge from that blank filter shall be prepared alongside wedges from the sample filters. At minimum, the blank filter shall be analyzed for each 20 samples analyzed. (40 CFR Part 763, Appendix A to Subpart E (AHERA), Table 1)

b. Maximum contamination on a single blank filter shall be no more than 53 structures/mm². Maximum average contamination for all blank filters shall be no more than 18 structures/mm². (AHERA, III.F.2)

3. Bulk samples.

a. Contamination checks using asbestos-free material, such as the glass fiber blank in SRM 1866 (Page C-3, NIST Handbook 150-3, August 1994) shall be performed at a frequency of one for every 20 samples analyzed. The detection of asbestos at a concentration exceeding 0.1% will require an investigation to detect and remove the source of the asbestos contamination.

b. The laboratory shall maintain a list of nonasbestos fibers that can be confused with asbestos (Section 7.5, Page C-8, NIST Handbook 150-3, August 1994). The list shall include crystallographic and/or chemical properties that disqualify each fiber being identified as asbestos (Section 2.5.5.2.1 Identification, Page 54, EPA/600/R-93/116).

c. The laboratory should have a set of reference asbestos materials from which a set of reference diffraction and X-ray spectra have been developed.

B. Phase contrast microscopy. At least two field blanks (or 10% of the total samples, whichever is greater) shall be submitted for analysis with each set of samples. Field blanks shall be handled in a manner representative of actual handling of associated samples in the set with a single exception that air shall not be drawn through the blank sample. A blank cassette shall be opened for approximately 30 seconds at the same time other cassettes are opened just prior to analysis. Results from field blank samples shall be used in the calculation to determine final airborne fiber concentration. The identity of blank filters should be unknown to the counter until all counts have been completed. If a field blank yields greater than seven fibers per 100 graticule fields, report possible contamination of the samples.

C. Polarized light microscopy.

1. Friable materials. At least one blank slide shall be prepared daily or with every 50 samples analyzed, whichever is less. This is prepared by mounting a subsample of an isotropic verified non-ACM (e.g., fiberglass in SRM 1866) in a drop of immersion oil (n_D should reflect usage of various n_D 's) on a clean slide, rubbing preparation tools (forceps, dissecting needles, etc.) in the mount and placing a clean coverslip on the drop. The entire area under the coverslip shall be scanned to detect any asbestos contamination. A similar check shall be made after every 20 uses of each piece of homogenization equipment. An isotropic verified non-ACM shall be homogenized in the clean equipment, a slide prepared with the material and the slide scanned for asbestos contamination. (This can be substituted for the blank slide mentioned in this section.)

2. Nonfriable materials. At least one non-ACM nonfriable material shall be prepared and analyzed with every 20 samples analyzed. This non-ACM shall go through the full preparation and analysis regimen for the type of analysis being performed.

1VAC30-45-822. Asbestos testing: test variability/reproducibility.

A. Transmission electron microscopy. Quality assurance analyses shall be performed regularly covering all time periods, instruments, tasks, and personnel. The selection of

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samples shall be random and samples of special interest may be included in the selection of samples for quality assurance analyses. When possible, the checks on personnel performance shall be executed without their prior knowledge. A disproportionate number of analyses shall not be performed prior to internal or external audits. It is recommended that a laboratory initially be at 100% quality control (all samples reanalyzed). The proportion of quality control samples can later be lowered gradually, as control indicates, to a minimum of 10%.

1. Water and wastewater. All analyses shall be performed on relocater grids so that other laboratories can easily repeat analyses on the same grid openings. Quality assurance analyses shall not be postponed during periods of heavy workloads. The total number of QA samples and blanks shall be greater than or equal to 10% of the total sample workload. Precision of analyses is related to concentration, as gleaned from interlaboratory proficiency testing. Relative standard deviations (RSD) for amphibole asbestos decreased from 50% at 0.8 MFL to 25% at 7 MFL in interlaboratory proficiency testing, while RSD for chrysotile was higher, 50% at 6 MFL.

a. Replicate. A second, independent analysis shall be performed on the same grids but on different grid openings than used in the original analysis of a sample. Results shall be within 1.5X of Poisson standard deviation. This shall be performed at a frequency of 1 per 100 samples. (EPA/600/R-94/134, Method 100.2, Table 2)

b. Duplicate. A second aliquot of sample shall be filtered through a second filter, prepared and analyzed in the same manner as the original preparation of that sample. Results shall be within 2.0X of Poisson standard deviation. This shall be performed at a frequency of one per 100 samples. (EPA/600/R-94/134, Method 100.2, Table 2)

c. Verified analyses. A second, independent analysis shall be performed on the same grids and grid openings used in the original analysis of a sample. The two sets of results shall be compared according to Turner and Steel (NISTIR 5351). This shall be performed at a frequency of one per 20 samples. Qualified analysts shall maintain an average of $\geq 80\%$ true positives, $< 20\%$ false negatives, and $\leq 10\%$ false positives.

2. Air.

a. All analyses shall be performed on relocater grids so that other laboratories can easily repeat analyses on the same grid openings.

b. The laboratory and TEM analysts shall obtain mean analytical results on NIST SRM 1876b so that trimmed mean values fall within 80% of the lower limit and 110% of the upper limit of the 95% confidence limits as

published on the certificate. These limits are derived from the allowable false positives and false negatives given in subdivision A 2 e (3) of this subsection. SRM 1876b shall be analyzed a minimum of once per year by each TEM analyst.

c. The laboratory shall have documentation demonstrating that TEM analysts correctly classify at least 90% of both bundles and single fibrils of asbestos structures greater than or equal to 1 mm in length in known standard materials traceable to NIST, such as NIST bulk asbestos SRM 1866.

d. Interlaboratory analyses shall be performed to detect laboratory bias. The frequency of interlaboratory verified analysis shall correspond to a minimum of 1 per 200 grid square analyses.

e. If more than one TEM is used for asbestos analysis, intermicroscope analyses shall be performed to detect instrument bias.

(1) Replicate. A second, independent analysis shall be performed in accordance with Section D.6.2.1.1.a. (AHERA, Table III)

(2) Duplicate. A second wedge from a sample filter shall be prepared and analyzed in the same manner as the original preparation of that sample. Results shall be within 2.0X of Poisson standard deviation. This shall be performed at a frequency of 1 per 100 samples. (AHERA, Table III)

(3) Verified analyses. A second, independent analysis shall be performed on the same grids and grid openings in accordance with subdivision A 1 c of this section.

3. Bulk samples. Determination of precision and accuracy should follow guidelines in NISTIR 5951, Guide for Quality Control on the Qualitative and Quantitative Analysis of Bulk Asbestos Samples: Version 1. Because bulk samples with low ($< 10\%$) asbestos content are the most problematic, a laboratory's quality control program should focus on such samples. At least 30% of a laboratory's QC analyses shall be performed on samples containing from 1.0% to 10% asbestos.

(a) Intra-analyst precision. At least one out of 50 samples shall be reanalyzed by the same analyst. For single analyst laboratories, at least one out of every 10 samples shall be reanalyzed by the same analyst.

(b) Inter-analyst precision. At least one out of 15 samples shall be reanalyzed by another analyst. Inter-analyst results will require additional reanalysis, possibly including another analyst, to resolve discrepancies when classification (ACM vs. non-ACM) errors occur, when asbestos identification errors occur, or when inter-analyst precision is found to be unacceptable.

(c) Inter-laboratory precision. The laboratory shall participate in round robin testing with at least one other laboratory. Samples shall be sent to this other lab at least four times per year. These samples shall be samples previously analyzed as QC samples. Results of these analyses shall be assessed in accordance with QC requirements. As a minimum, the QC requirements shall address misclassifications (false positives, false negatives) and misidentification of asbestos types.

B. Phase contrast microscopy.

1. Inter-laboratory precision. Each laboratory analyzing air samples for compliance determination shall implement an inter-laboratory quality assurance program that as a minimum includes participation of at least two other independent laboratories. Each laboratory shall participate in round robin testing at least once every six months with at least all the other laboratories in its inter-laboratory quality assurance group. Each laboratory shall submit slides typical of its own workload for use in this program. The round robin shall be designed and results analyzed using appropriate statistical methodology. Results of this QA program shall be posted in each laboratory to keep the microscopists informed.

2. Intra- and inter-analyst precision. Each analyst shall select and count a prepared slide from a "reference slide library" on each day on which air counts are performed. Reference slides shall be prepared using well-behaved samples taken from the laboratory workload. Fiber densities shall cover the entire range routinely analyzed by the laboratory. These slides shall be counted by all analysts to establish an original standard deviation and corresponding limits of acceptability. Results from the daily reference sample analysis shall be compared to the statistically derived acceptance limits using a control chart or a database. It is recommended that the labels on the reference slides be periodically changed so that the analysts do not become familiar with the samples. Intra- and inter-analyst precision may be estimated from blind recounts on reference samples. Inter-analyst precision shall be posted in each laboratory to keep the microscopists informed.

C. Polarized light microscopy. Refer to subdivision A 3 of this section.

1VAC30-45-823. Asbestos testing: other quality control measures.

A. Transmission electron microscopy.

1. Water and wastewater.

a. Filter preparations shall be made from all six asbestos types from NIST SRMs 1866 and 1867. These preparations shall have concentrations between one and 20 structures (> 10µm) per 0.01 mm². One of these

preparations shall be analyzed independently at a frequency of one per 100 samples analyzed. Results shall be evaluated as verified asbestos analysis in accordance with Turner and Steel (NISTIR 5351).

b. NIST SRM 1876b shall be analyzed annually by each analyst. Results shall be evaluated in accordance with limits published for that SRM. This SRM is not strictly appropriate for waterborne asbestos but analysts can demonstrate general TEM asbestos competence by producing results within the published limits of this (the only recognized TEM counting standard) SRM.

2. Air

a. Filter preparations shall be made from all six asbestos types in accordance with subdivision A 1 a of this section.

b. NIST SRM 1876b shall be analyzed annually in accordance with subdivision A 1 b of this section.

3. Bulk samples. All analysts shall be able to correctly identify the six regulated asbestos types (chrysotile, amosite, crocidolite, anthophyllite, actinolite, and tremolite). Standards for the six asbestos types listed are available from NIST (SRMs 1866 and 1867). These materials can also be used as identification standards for AEM (Section 3.2.1 Qualitative Analysis, Page 57, EPA/600/R-93/116).

B. Phase contrast microscopy.

1. Test for nonrandom fiber distribution. Blind recounts by the same analyst shall be performed on 10% of the filters counted. A person other than the counter should re-label slides before the second count. A test for type II error (NIOSH 7400, Issue 2, 15 August 1994, Section 13) shall be performed to determine whether a pair of counts by the same analyst on the same slide should be rejected due to nonrandom fiber distribution. If a pair of counts is rejected by this test, the remaining samples in the set shall be recounted and the new counts shall be tested against first counts. All rejected paired counts shall be discarded. It shall not be necessary to use this statistic on blank recounts.

2. All individuals performing airborne fiber analysis shall have taken the NIOSH Fiber Counting Course for sampling and evaluating airborne asbestos dust or an equivalent course.

3. All laboratories shall participate in a national sample testing scheme such as the Proficiency Analytical Testing (PAT) program or the Asbestos Analysts Registry (AAR) program, both sponsored by the American Industrial Hygiene Association (AIHA), or equivalent.

C. Polarized light microscopy.

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1. Friable materials. Because accuracy cannot be determined by reanalysis of routine field samples, at least one out of 100 samples shall be a standard or reference sample that has been routinely resubmitted to determine analyst's precision and accuracy. A set of these samples should be accumulated from proficiency testing samples with predetermined weight compositions or from standards generated with weighed quantities of asbestos and other bulk materials (Perkins and Harvey, 1993; Parekh et al., 1992; Webber et al., 1982). At least half of the reference samples submitted for this QC shall contain between 1.0% and 10% asbestos.

2. Nonfriable materials. At least one out of 100 samples shall be a verified quantitative standard that has routinely been resubmitted to determine analyst precision and accuracy.

1VAC30-45-824. Asbestos testing: method evaluation.

In order to ensure the accuracy of reported results, the following procedures shall be in place:

1. Demonstration of capability shall be performed initially (prior to the analysis of any samples) and with a significant change in instrument type, personnel, or method.

2. Performance audits. The results of such analyses shall be used by the laboratory to evaluate the ability of the laboratory to produce accurate data.

1VAC30-45-825. Asbestos testing: asbestos calibration.

Refer to methods referenced in the following sections for specific equipment requirements.

1. Transmission electron microscopy: general. Analytical electron microscopy equipment will not be discussed in this document.

2. Transmission electron microscopy: water and wastewater. All calibrations listed below (unless otherwise noted) shall be performed under the same analytical conditions used for routine asbestos analysis and shall be recorded in a notebook and include date and analyst's signature. Frequencies stated below may be reduced to "before next use" if no samples are analyzed after the last calibration period has expired. Likewise, frequencies may have to be increased following non-routine maintenance or unacceptable calibration performance.

a. Magnification calibration. Magnification calibration shall be done at the fluorescent screen, with the calibration specimen at the eucentric position, at the magnification used for fiber counting, generally 10,000 and 20,000x. A logbook shall be maintained with the dates of the calibration recorded. Calibrations shall be performed monthly to establish the stability of magnification. Calibration data shall be displayed on

control charts that show trends over time. (EPA/600/R-94/134, Method 100.2, Section 10.1)

b. Camera constant. The camera length of the TEM in the Selected Area Electron Diffraction (SAED) mode shall be calibrated before SAED patterns of unknown samples are observed. The diffraction specimen shall be at the eucentric position for this calibration. This calibration shall allow accurate (< 10% variation) measurement of layer-line spacings on the medium used for routine measurement, i.e., the phosphor screen or camera film. This shall also allow accurate (< 5.0% variation) measurement of zone axis SAED patterns on permanent media, e.g., film. Calibrations shall be performed monthly to establish the stability of the camera constant (EPA/600/R-94/134, Method 100.2, Section 10.2). Where nonasbestiform minerals may be expected (e.g., winchite, richterite, industrial talc, vermiculite, etc.), an internal camera constant standard such as gold, shall be deposited and measured on each sample to facilitate accurate indexing of zone axis SAED patterns. In such cases, layer line analysis alone shall not be used. Calibration data shall be displayed on control charts that show trends over time.

c. Spot size. The diameter of the smallest beam spot at crossover shall be less than 250 nm as calibrated quarterly. Calibration data shall be displayed on control charts that show trends over time. (EPA /600/R-94/134, Method 100.2, Section 10.3)

d. Beam dose. The beam dose shall be calibrated so that beam damage to chrysotile is minimized, specifically so that an electron diffraction pattern from a single fibril $\geq 1 \mu\text{m}$ in length from a NIST SRM chrysotile sample is stable in the electron beam dose for at least 15 seconds.

e. EDXA system.

(1) The x-ray energy vs. channel number for the EDXA system shall be calibrated to within 20 eV for at least two peaks between 0.7 keV and 10 keV. One peak shall be from the low end (0.7 keV to 2 keV) and the other peak from the high end (7 keV to 10 keV) of this range. The calibration of the x-ray energy shall be checked prior to each analysis of samples and recalibrated if out of the specified range.

(2) The ability of the system to resolve the Na Ka line from the Cu L line shall be confirmed quarterly by obtaining a spectrum from the NIST SRM 1866 crocidolite sample on a copper grid.

(3) The k-factors for elements found in asbestos (Na, Mg, Al, Si, Ca, and Fe) relative to Si shall be calibrated semiannually, or anytime the detector geometry may be altered. NIST SRM 2063a shall be used for Mg, Si, Ca, Fe, while k-factors for Na and Al may be obtained from suitable materials such as albite, kaersutite, or NIST

SRM 99a. The k-factors shall be determined to a precision (2s) within 10% relative to the mean value obtained for Mg, Al, Si, Ca, and Fe, and within 20% relative to the mean value obtained for Na. The k-factor relative to Si for Na shall be between 1.0 and 4.0, for Mg and Fe shall be between 1.0 and 2.0, and for Al and Ca shall be between 1.0 and 1.75. The k-factor for Mg relative to Fe shall be 1.5 or less. Calibration data shall be displayed on control charts that show trends over time.

(4) The detector resolution shall be checked quarterly to ensure a full-width half-maximum resolution of <175 eV at Mn Ka (5.90 keV). Calibration data shall be displayed on control charts that show trends over time.

(5) The portions of a grid in a specimen holder for which abnormal x-ray spectra are generated under routine asbestos analysis conditions shall be determined and these areas shall be avoided in asbestos analysis.

(6) The sensitivity of the detector for collecting x-rays from small volumes shall be documented quarterly by collecting resolvable Mg and Si peaks from a unit fibril of NIST SRM 1866 chrysotile.

f. Low temperature asher. The low temperature asher shall be calibrated quarterly by determining a calibration curve for the weight vs. ashing time of collapsed mixed-cellulose-ester (MCE) filters. Calibration data shall be displayed on control charts that show trends over time.

g. Grid openings. The magnification of the grid opening measurement system shall be calibrated using an appropriate standard at a frequency of 20 openings/20 grids/lot of 1000 or one opening/sample. The variation in the calibration measurements (2s) is <5.0% of the mean calibration value.

3. Air. All calibrations shall be performed in accordance with subdivision 2 of this section, with the exception of magnification. Magnification calibration shall be done at the fluorescent screen, with the calibration specimen at the eucentric position, at the magnification used for fiber counting, generally 15,000 to 20,000x (AHERA, III.G.1.c). A logbook shall be maintained with the dates of the calibration recorded. Calibrations shall be performed monthly to establish the stability of magnification.

4. Bulk samples. All calibrations shall be performed in accordance with subdivision 3 of this section.

5. Phase contrast microscopy.

a. At least once daily, the analyst shall use the telescope ocular (or Bertrand lens, for some microscopes) supplied by the manufacturer to ensure that the phase rings (annular diaphragm and phase-shifting elements) are concentric.

b. The phase-shift limit of detection of the microscope shall be checked monthly or after modification or relocation using an HSE/NPL phase-contrast test slide for each analyst/microscope combination (refer to NIOSH 7400, Issue 2, 15 August 1994, Section 10b). This procedure assures that the minimum detectable fiber diameter (< ca. 0.25mm) for this microscope is achieved.

c. Prior to ordering the Walton-Beckett graticule, calibration, in accordance with NIOSH 7400, Issue 2, 15 August 1994, Appendix A, shall be performed to obtain a counting area 100 mm in diameter at the image plane. The diameter, d_c (mm), of the circular counting area and the disc diameter shall be specified when ordering the graticule. The field diameter (D) shall be verified (or checked), to a tolerance of $100 \mu\text{m} \pm 2 \mu\text{m}$, with a stage micrometer upon receipt of the graticule from the manufacturer. When changes (zoom adjustment, disassembly, replacement, etc.) occur in the eyepiece-objective-reticle combination, field diameter shall be remeasured (or recalibrated) to determine field area (mm^2). Recalibration of field diameter shall also be required when there is a change in interpupillary distance (i.e., change in analyst). Acceptable range for field area shall be 0.00754 mm^2 to 0.00817 mm^2 . The actual field area shall be documented and used.

6. Polarized light microscopy.

a. Microscope alignment. To accurately measure the required optical properties, a properly aligned polarized light microscope (PLM) shall be utilized. The PLM shall be aligned before each use. (Section 2.2.5.2.3, EPA/600/R-93/116, July 1993)

b. Refractive index liquids. Series of $n_D = 1.49$ through 1.72 in intervals less than or equal to 0.005. Refractive index liquids for dispersion staining, high-dispersion series 1.550, 1.605, 1.680. The accurate measurement of the refractive index (RI) of a substance requires the use of calibrated refractive index liquids. These liquids shall be calibrated at first use and semiannually, or next use, whichever is less frequent, to an accuracy of 0.004, with a temperature accuracy of 2°C using a refractometer or RI glass beads.

1VAC30-45-826. Asbestos testing: analytical sensitivity.

A. Transmission electron microscopy.

1. Water and wastewater. An analytical sensitivity of 200,000 fibers per liter (0.2 MFL) is required for each sample analyzed (EPA/600/R-94/134, Method 100.2, Section 1.6). Analytical sensitivity is defined as the waterborne concentration represented by the finding of one asbestos structure in the total area of filter examined. This value will depend on the fraction of the filter sampled and the dilution factor (if applicable).

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2. Air. An analytical sensitivity of 0.005 structures/cm² is required for each sample analyzed. Analytical sensitivity is defined as the airborne concentration represented by the finding of one asbestos structure in the total area of filter examined. This value will depend on the effective surface area of the filter, the filter area analyzed, and the volume of air sampled (AHERA, Table I).

3. Bulk samples.

a. The range is dependent on the type of bulk material being analyzed. The sensitivity may be as low as 0.0001% depending on the extent to which interfering materials can be removed during the preparation of AEM specimens. (Section 2.5.2 Range, Page 51, EPA/600/R-93/116)

b. There should be an error rate of less than 1.0% on the qualitative analysis for samples that contain chrysotile, amosite, and crocidolite. A slightly higher error rate may occur for samples that contain anthophyllite, actinolite, and tremolite, as it can be difficult to distinguish among the three types. (Section 3, Page 10, NIST Handbook 150-3, August 1994)

B. Phase contrast microscopy. The normal quantitative working range of the test method is 0.04 to 0.5 fiber/ cm² for a 1000 L air sample. An ideal counting range on the filter shall be 100 to 1300 fibers/mm². The limit of detection (LOD) is estimated to be 5.5 fibers per 100 fields or 7 fibers/mm². The LOD in fiber/cc will depend on sample volume and quantity of interfering dust but shall be <0.01 fiber/ cm² for atmospheres free of interferences. (NIOSH 7400, Issue 2, 15 August 1994)

C. Polarized light microscopy. The laboratory shall utilize a test method that provides a limit of detection that is appropriate and relevant for the intended use of the data. Limit of detection shall be determined by the protocol in the test method or applicable regulation.

1VAC30-45-827. Asbestos testing: data reduction.

A. Transmission electron microscopy.

1. Water and wastewater.

a. The concentration of asbestos in a given sample shall be calculated in accordance with EPA/600/R-94/134, Method 100.2, Section 12.1. Refer to 1VAC30-45-730 K for additional data reduction requirements.

b. Measurement uncertainties. The laboratory shall calculate and report the upper and lower 95% confidence limits on the mean concentration of asbestos fibers found in the sample (EPA /600/R-94/134, Method 100.2, Section 12.2.2).

2. Air.

a. The concentration of asbestos in a given sample shall be calculated in accordance with the method utilized, e.g., AHERA. Refer to 1VAC30-45-730 K for additional data reduction requirements.

b. Measurement uncertainties. The laboratory shall calculate and report the upper and lower 95% confidence limits on the mean concentration of asbestos fibers found in the sample.

3. Bulk samples.

a. The concentration of asbestos in a given sample shall be calculated in accordance with the method utilized (e.g., EPA/600/R-93/116, July 1993). Refer to 1VAC30-45-730 K for additional data reduction requirements.

b. Measurement uncertainties. Proficiency testing for floor tiles analyzed by TEM following careful gravimetric reduction (New York ELAP Certification Manual Item 198.4) has revealed an interlaboratory standard deviation of approximately 20% for residues containing 70% or more asbestos. Standard deviations range from 20% to 60% for residues with lower asbestos content.

B. Phase contrast microscopy.

1. Airborne fiber concentration in a given sample shall be calculated in accordance with NIOSH 7400, Issue 2, 15 August 1994, Sections 20 and 21. Refer to 1VAC30-45-730 K for additional data reduction requirements.

2. Measurement uncertainties. The laboratory shall calculate and report the intra-laboratory and inter-laboratory relative standard deviation with each set of results. (NIOSH 7400, Issue 2, 15 August 1994)

3. Fiber counts above 1300 fibers/mm² and fiber counts from samples with >50% of the filter area covered with particulate should be reported as "uncountable" or "probably biased." Other fiber counts outside the 100-1300 fibers/mm² range should be reported as having "greater than optimal variability" and as being "probably biased."

C. Polarized light microscopy.

1. The concentration of asbestos in a given sample shall be calculated in accordance with the method utilized (e.g., EPA/600/R-93/116, July 1993). Refer to 1VAC30-45-730 K for additional data reduction requirements.

2. Method uncertainties. The individual laboratory shall determine precision and accuracy for the percent range involved. If point counting and/or visual estimates are used, a table of reasonable expanded errors (refer to EPA/600/R-93/116, July 1993, Table 2-1) should be generated for different concentrations of asbestos.

1VAC30-45-828. Asbestos testing: quality of standards and reagents.**A. Transmission electron microscopy.**

1. The quality control program shall establish and maintain provisions for asbestos standards.

a. Reference standards that are used in an asbestos laboratory shall be obtained from the National Institute of Standards and Technology (NIST), EPA, or suppliers who participate in supplying NIST standards or NIST traceable asbestos. Any reference standards purchased outside the United States shall be traceable back to each country's national standards laboratory. Commercial suppliers of reference standards shall conform to ANSI N42.22 to assure the quality of their products.

b. Reference standards shall be accompanied with a certificate of calibration whose content is as described in ANSI N42.22-1995, Section 8, Certificates.

2. All reagents used shall be analytical reagent grade or better.

3. The laboratory shall have mineral fibers or data from mineral fibers that will allow differentiating asbestos from at least the following "look-alikes": fibrous talc, sepiolite, wollastonite, attapulgite (palygorskite), halloysite, vermiculite scrolls, antigorite, lizardite, pyroxenes, hornblende, richterite, winchite, or any other asbestiform minerals that are suspected as being present in the sample.

B. Phase contrast microscopy. Standards of known concentration have not been developed for this testing method. Routine workload samples that have been statistically validated and national proficiency testing samples such as PAT and AAR samples available from the AIHA may be utilized as reference samples (refer to 1VAC30-45-822 B 2) to standardize the optical system and analyst. All other testing reagents and devices (HSE/NPL test slide and Walton-Beckett Graticule) shall conform to the specifications of the method (refer to NIOSH 7400, Issue 2, 15 August 1994).

C. Polarized light microscopy. Refer to 1VAC30-45-828 A.

1VAC30-45-829. Asbestos testing: constant and consistent test conditions.

The laboratory shall establish and adhere to written procedures to minimize the possibility of cross-contamination between samples.

1VAC30-45-830. (Reserved).**1VAC30-45-840. (Reserved).****[~~1VAC30-45-760~~ 1VAC30-45-850]. Sample handling, sample acceptance policy and sample receipt.**

While the laboratory may not have control of field sampling activities, the following are essential to ensure the validity of the laboratory's data.

1. Sample tracking. The laboratory shall have a documented system for uniquely identifying the items to be tested to ensure that there can be no confusion regarding the identity of such items at any time. This system shall include identification for all samples, subsamples and subsequent extracts or digestates or both. The use of container shape, size or other physical characteristic, such as amber glass or purple top, is not an acceptable means of identifying the sample. [System laboratories shall use a permanent chronological record such as a logbook or electronic database to document receipt of all containers. This sample receipt log shall record the following at a minimum: name of facility where sample was taken, date and time of laboratory receipt, unique laboratory ID code, and signature or initials of the person making the entries.]

2. Sample acceptance policy. The laboratory shall have a written sample acceptance policy that clearly outlines the circumstances under which samples shall be accepted or rejected. The policy shall ensure that only properly obtained samples [with appropriate sampling records (see 1VAC30-45-640 B)] are analyzed and that the samples are handled properly. This sample acceptance policy shall be made available to sample collection personnel. The policy shall include elements such as appropriate documentation of the sample's identification, use of appropriate sample containers, adherence to specified holding times, adequate sample volume to perform necessary tests, and procedures to be used when samples show signs of damage, contamination or inadequate preservation.

3. Sample receipt protocols.

a. Upon receipt, the condition of the sample, including any abnormalities or departures from standard condition as prescribed in the relevant test method, shall be recorded. All items specified by the sample acceptance policy shall be checked.

b. All samples that require thermal preservation shall be considered acceptable if the arrival temperature is either within 2 degrees Celsius of the required temperature or the method specified range. For samples with a specified temperature of 4 degrees Celsius, samples with a temperature of ranging from just above freezing temperature of water to 6 degrees Celsius shall be acceptable. Samples that are hand delivered to the laboratory immediately after collection [or on the same

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day that are collected] may not meet this criteria. In these cases, the samples shall be considered acceptable if there is evidence that the chilling process has begun such as arrival on ice.

c. The laboratory shall implement procedures for checking chemical preservation using readily available techniques, such as pH or free chlorine prior to or during sample preparation or analysis.

d. The results of all checks required by the sample acceptance policy and relevant test method shall be recorded.

4. Storage conditions.

a. The laboratory shall have documented procedures and appropriate facilities to avoid deterioration, contamination or damage to the sample during storage, handling, preparation, and testing. Any relevant instructions provided with the item shall be followed. Where items have to be stored or conditioned under specific environmental conditions, these conditions shall be maintained, monitored and recorded.

b. Samples shall be stored according to the conditions specified by preservation protocols:

(1) Samples that require thermal preservation shall be stored under refrigeration that is within 2 degrees Celsius of the specified preservation temperature unless method specific criteria exist. For samples with a specified storage temperature of 4 degrees Celsius, storage at a temperature above the freezing point of water to 6 degrees Celsius shall be acceptable.

(2) Samples shall be stored away from all standards, reagents, food and other potentially contaminating sources. Samples shall be stored in such a manner to prevent cross contamination.

c. Sample fractions, extracts, leachates and other sample preparation products shall be stored according to subdivision 4 a of this section or according to specifications in the test method.

d. Where a sample or portion of the sample is to be held secure (for example, for reasons of record, safety or value, or to enable check calibrations or tests to be performed later), the laboratory shall have storage and security arrangements that protect the condition and integrity of the secured items or portions concerned.

5. Sample disposal. The laboratory shall have standard operating procedures for the disposal of samples, digestates, leachates and extracts or other sample preparation products.

[~~1VAC30-45-770~~ 1VAC30-45-860]. Laboratory report format and contents.

A. The results of each test or series of tests carried out by the laboratory shall be reported accurately, clearly, unambiguously and objectively. The results shall normally be reported in a test report required by regulation and shall include all the information necessary for the interpretation of the test results and all information required by the method used.

B. Where the certificate or report contains results of tests performed by subcontractors, these results shall be clearly identified by subcontractor name or applicable certification number.

C. After issuance of the report, the laboratory report shall remain unchanged. Material amendments to a calibration certificate, test report or test certificate after issue shall be made only in the form of a further document, or data transfer including the statement "Supplement to Test Report or Test Certificate, serial number . . . (or as otherwise identified)," or equivalent form of wording. Such amendments shall meet all the relevant requirements of this article.

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 Certification of Environmental Laboratories [~~Performing Only Simple Test Procedures Under 1VAC35-45 (with instructions)~~, eff. ~~xx/xx~~ DGS/DCLS 1 (eff. 10/08)].

[~~Application for Certification of General Environmental Laboratories under 1VAC35 45 (with instructions)~~, eff. ~~xx/xx~~]

CHAPTER 46 ACCREDITATION FOR COMMERCIAL ENVIRONMENTAL LABORATORIES

Part I General Provisions

1VAC30-46-10. Purpose.

Section 2.2-1105 of the Code of Virginia directs the Division of Consolidated Laboratory Services to establish a program to certify environmental laboratories that perform tests, analyses, measurements or monitoring required [~~by~~ pursuant to] the Commonwealth's air, waste and water laws and regulations. This chapter sets out the required standards and the process by which owners [~~or operators~~] of commercial environmental laboratories may obtain certification for their laboratories. Certification is referred to as accreditation in this chapter. Commercial environmental

laboratories are accredited under the standards of the National Environmental Laboratory Accreditation Conference [(NELAC)] as approved in [2002 2003]. In addition, this chapter sets out the process that [~~NELAC NELAP~~] - accredited environmental laboratories [~~located outside Virginia~~] must use to receive accreditation in Virginia. 1VAC30-45 covers noncommercial environmental laboratories.

1VAC30-46-20. Establishment of accreditation program.

A. Once the accreditation program has been established, laboratory accreditation shall be required before any environmental analyses performed by a commercial environmental laboratory may be used for the purposes of the Virginia Air Pollution Control Law, the Virginia Waste Management Act or the State Water Control Law (§10.1-1300 et seq., §10.1-1400 et seq., and §62.1-44.2 et seq., respectively, of the Code of Virginia).

B. The accreditation program shall be established on [~~the first day of the 25th month following the effective date of this chapter~~ October 1, 2011].

1VAC30-46-30. Applicability.

A. General applicability. This chapter applies to the following:

1. Any owner [~~or operator~~] of a commercial environmental laboratory.
2. Any owner [~~or operator~~] of an environmental laboratory [~~located in jurisdictions outside of Virginia~~ holding NELAP accreditation from a primary accrediting authority] who wishes to apply for reciprocal accreditation under 1VAC30-46-140.

B. DGS-DCLS.

1. NELAP-accredited laboratory. DGS-DCLS shall meet the requirements of this chapter through review and accreditation by a NELAP-accredited federal or state accrediting authority. This process shall be completed before the program under this chapter and 1VAC30-45 is established.
2. Primary accrediting authority. DGS-DCLS shall meet the requirements of the NELAC [~~Standards~~ standards] to become the primary accrediting authority for the Commonwealth of Virginia. This review and approval by a NELAP accrediting team shall be completed no later than [~~one year following the effective date of this chapter~~ October 1, 2009].

C. Voluntary accreditation. Any owner [~~or operator~~] of an environmental laboratory may apply for accreditation under this chapter.

D. Environmental laboratories required to obtain drinking water certification under 1VAC30-40. Any owner [~~or~~

~~operator~~] of an environmental laboratory who must meet the requirements of 1VAC30-40 pertaining to drinking water laboratory certification and either 1VAC30-45 or this chapter may meet those requirements by obtaining accreditation under this chapter.

1VAC30-46-40. Definitions.

[The definitions in the 2003 National Environmental Laboratory Accreditation Conference (NELAC) standards, Chapter 1, Appendix A – Glossary, are incorporated by reference into this section. Some of the definitions from this glossary are included in this section because the terms are used throughout this chapter. Where a term is defined in this section, the term shall have no other meaning, even if it is defined differently in the Code of Virginia or another regulation of the Virginia Administrative Code. Unless specifically defined in this section, the terms used in this chapter shall have the meanings commonly ascribed to them by recognized authorities.]

"Accreditation" means [the process by which an agency or organization evaluates and recognizes a laboratory as meeting certain predetermined qualifications or standards, thereby accrediting the laboratory. "Accreditation" is] the term used as a substitute for the term "certification" under this chapter.

"Accrediting authority" means the territorial, state, or federal agency having responsibility and accountability for environmental laboratory accreditation and which grants accreditation [under NELAC].

"Acceptance criteria" means specified limits placed on characteristics of an item, process, or service defined in requirement documents.

["Algae" means simple single-celled, colonial, or multicelled, mostly aquatic plants, containing chlorophyll and lacking roots, stems and leaves that are either suspended in water (phytoplankton) or attached to rocks and other substrates (periphyton).]

"Analyte" means the substance or physical property to be determined in samples examined.

"Analytical method" means a technical procedure for providing analysis of a sample, defined by a body such as the Environmental Protection Agency or the American Society for Testing and Materials, that may not include the sample preparation method.

"Assessment" means the evaluation process used to measure or establish the performance, effectiveness, and conformance of an organization and its systems or both to defined criteria.

"Assessor" means the person who performs on-site assessments of laboratories' capability and capacity for meeting the requirements under this chapter by examining the records and other physical evidence for each one of the tests for which accreditation has been requested.

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"Authority" means, in the context of a governmental body or local government, an authority created under the provisions of the Virginia Water and Waste Authorities Act, Chapter 51 (§15.2-5100 et seq.) of Title 15.2 of the Code of Virginia.

["Benthic macroinvertebrates" means bottom dwelling animals without backbones that live at least part of their life cycles within or upon available substrates within a body of water.]

"Commercial environmental laboratory" means an environmental laboratory where environmental analysis is performed for another person.

"Corrective action" means the action taken to eliminate the causes of an existing nonconformity, defect or other undesirable situation in order to prevent recurrence.

"DGS-DCLS" means the Division of Consolidated Laboratory Services of the Department of General Services.

"Environmental analysis" or "environmental analyses" means any test, analysis, measurement, or monitoring used for the purposes of the Virginia Air Pollution Control Law, the Virginia Waste Management Act or the State Water Control Law (§10.1-1300 et seq., §10.1-1400 et seq., and §62.1-44.2 et seq., respectively, of the Code of Virginia). For the purposes of these regulations, any test, analysis, measurement, or monitoring required [~~by~~ pursuant to] the regulations promulgated under these three laws, or by any permit or order issued under the authority of any of these laws or regulations is "used for the purposes" of these laws. The term shall not include the following:

1. Sampling of [~~air,~~] water [~~or waste, solid and chemical materials, biological tissue, or air and emissions~~].

2. Field testing and measurement of [~~air,~~] water [~~or waste, solid and chemical materials, biological tissue, or air and emissions~~], except when performed in an environmental laboratory rather than at the site where the sample was taken.

[3. Taxonomic identification of samples for which there is no national accreditation standard such as algae, benthic macroinvertebrates, macrophytes, vertebrates and zooplankton.]

"Environmental laboratory" or "laboratory" means a facility or a defined area within a facility where environmental analysis is performed. [A structure built solely to shelter field personnel and equipment from inclement weather shall not be considered an environmental laboratory.]

"Establishment date" means the date set for the accreditation program under this chapter and the certification program under 1VAC30-45 to be established.

"Establishment of accreditation program" or "established program" means that DGS-DCLS has completed the initial accreditation of environmental laboratories covered by this

chapter and the initial certification of environmental laboratories covered by 1VAC30-45.

"Facility" means something that is built or installed to serve a particular function.

"Field of accreditation" means an approach to accrediting laboratories by matrix, technology/method and analyte/analyte group.

"Field of accreditation matrix" means the following when accrediting a laboratory:

1. Drinking water. Any aqueous sample that has been designated a potable or potential potable water source.

2. Nonpotable water. Any aqueous sample excluded from the definition of drinking water matrix. Includes surface water, groundwater, effluents, water treatment chemicals, and TCLP or other extracts.

3. Solid and chemical materials. Includes soils, sediments, sludges, products and byproducts of an industrial process that results in a matrix not previously defined.

4. Biological tissue. Any sample of a biological origin such as fish tissue, shellfish, or plant material. Such samples shall be grouped according to origin, i.e., by species.

5. Air and emissions. Whole gas or vapor samples including those contained in flexible or rigid wall containers and the extracted concentrated analytes of interest from a gas or vapor that are collected with a sorbent tube, impinger solution, filter or other device.

"Field of proficiency testing" means an approach to offer proficiency testing by matrix, [~~technology~~ technology/method], and analyte/analyte group.

"Field testing and measurement" means any of the following:

1. Any test for parameters under 40 CFR Part 136 for which the holding time indicated for the sample requires immediate analysis; or

2. Any test defined as a field test in federal regulation.

The following is a limited list of currently recognized field tests or measures that is not intended to be inclusive: continuous emissions monitoring; on-line monitoring; flow monitoring; tests for pH, residual chlorine, temperature and dissolved oxygen; and field analysis for soil gas.

"Finding" means a conclusion reached during an on-site assessment that identifies a condition having a significant effect on an item or activity. An assessment finding is normally a deficiency and is normally accompanied by specific examples of the observed condition.

"Governmental body" means any department, agency, bureau, authority, or district of the United States government,

of the government of the Commonwealth of Virginia, or of any local government within the Commonwealth of Virginia.

"Holding time (or maximum allowable holding time)" means the maximum time that a sample may be held prior to analysis and still be considered valid or not compromised.

"Initial accreditation period" means the period during which DGS-DCLS is accepting and processing applications for the first time under this chapter as specified in 1VAC30-46-70.

"Legal entity" means an entity, other than a natural person, who has sufficient existence in legal contemplation that it can function legally, be sued or sue and make decisions through agents as in the case of corporations.

"Local government" means a municipality (city or town), county, sanitation district, or authority.

["Macrophytes" means any aquatic or terrestrial plant species that can be identified and observed with the eye, unaided by magnification.]

"Matrix" means the component or substrate that contains the analyte of interest.

"National accreditation database" means the publicly accessible database listing the accreditation status of all laboratories participating in NELAP.

"National Environmental Laboratory Accreditation Conference (NELAC)" means a voluntary organization of state and federal environmental officials and interest groups with the primary purpose to establish mutually acceptable standards for accrediting environmental laboratories. A subset of NELAP.

"National Environmental Laboratory Accreditation Program (NELAP)" means the overall National Environmental Laboratory Accreditation Program of which NELAC is a part.

"Noncommercial environmental laboratory" means either of the following:

1. An environmental laboratory where environmental analysis is performed solely for the owner of the laboratory.
2. An environmental laboratory where the only performance of environmental analysis for another person is one of the following:
 - a. Environmental analysis performed by an environmental laboratory owned by a local government for an owner [~~or operator~~] of a small [sewage wastewater] treatment [~~plant~~ system] treating domestic sewage at a flow rate of less than or equal to 1,000 gallons per day.
 - b. Environmental analysis performed by an environmental laboratory operated by a corporation as part of a general contract issued by a local government to

operate and maintain a [sewage wastewater] treatment [~~facility~~ system] or a waterworks.

c. Environmental analysis performed by an environmental laboratory owned by a corporation as part of the prequalification process [~~for~~ or to confirm the identity or characteristics of material supplied by] a potential [or existing] customer [or generator] as required by a hazardous waste management permit under 9VAC20-60.

d. Environmental analysis performed by an environmental laboratory owned by a Publicly Owned Treatment Works (POTW) for an industrial source of wastewater under a permit issued by the POTW to the industrial source as part of the requirements of a pretreatment program under Part VII (9VAC25-31-730 et seq.) of 9VAC25-31.

e. Environmental analysis performed by an environmental laboratory owned by a county authority for any municipality within the county's geographic jurisdiction when the environmental analysis pertains solely to the purpose for which the authority was created.

f. Environmental analysis performed by an environmental laboratory owned by an authority or a sanitation district for any participating local government of the authority or sanitation district when the environmental analysis pertains solely to the purpose for which the authority or sanitation district was created.

"Owner" [~~or operator~~] means any person who owns [~~or~~] operates [, leases or controls] an environmental laboratory.

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

"Physical," for the purposes of fee test categories, means the tests to determine the physical properties of a sample. Tests for solids, turbidity and color are examples of physical tests.

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

"Primary accrediting authority" means the agency or department designated at the territory, state or federal level as the recognized authority with the responsibility and accountability for granting NELAC accreditation to a specific laboratory for a specific field of accreditation.

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"Proficiency test or testing (PT)" means evaluating a laboratory's performance under controlled conditions relative to a given set of criteria through analysis of unknown samples provided by an external source.

"Proficiency test (PT) sample" means a sample, the composition of which is unknown to [both] the analyst [and the laboratory] , provided to test whether the analyst or laboratory or both can produce analytical results within specified acceptance criteria.

"Proficiency testing (PT) program" means the aggregate of providing rigorously controlled and standardized environmental samples to a laboratory for analysis, reporting of results, statistical evaluation of the results and the collective demographics and results summary of all participating laboratories.

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

"Quality assurance" means an integrated system of activities involving planning, quality control, quality assessment, reporting and quality improvement to ensure that a product or service meets defined standards of quality with a stated level of confidence.

"Quality assurance officer" means the person who has responsibility for the quality system and its implementation. Where staffing is limited, the quality assurance officer may also be the technical director.

"Quality control" means the overall system of technical activities whose purpose is to measure and control the quality of a product or service so that it meets the needs of users.

"Quality manual" means a document stating the management policies, objectives, principles, organizational structure and authority, responsibilities, accountability, and implementation of an agency, organization, or laboratory, to ensure the quality of its product and the utility of its product to its users.

"Quality system" means a structured and documented management system describing the policies, objectives, principles, organizational authority, responsibilities, accountability, and implementation plan of an organization for ensuring quality in its work processes, products (items), and services. The quality system provides the framework for planning, implementing, and assessing work performed by

the organization and for carrying out required quality assurance and quality control.

"Quality system matrix," for purposes of batch and quality control requirements, means the following:

1. Aqueous. Any aqueous sample excluded from the definition of drinking water matrix or saline/estuarine source. Includes surface water, groundwater, effluents, and TCLP or other extracts.

2. Drinking water. Any aqueous sample that has been designated a potable or potential potable water source.

3. Saline/estuarine. Any aqueous sample from an ocean or estuary, or other salt water source such as the Great Salt Lake.

4. Non-aqueous liquid. Any organic liquid with less than 15% settleable solids.

5. Biological tissue. Any sample of a biological origin such as fish tissue, shellfish, or plant material. Such samples shall be grouped according to origin [i.e., by species] .

6. Solids. Includes soils, sediments, sludges and other matrices with [less more] than 15% settleable solids.

7. Chemical waste. A product or byproduct of an industrial process that results in a matrix not previously defined.

8. Air and emissions. Whole gas or vapor samples including those contained in flexible or rigid wall containers and the extracted concentrated analytes of interest from a gas or vapor that are collected with a sorbent tube, impinger solution, filter or other device.

"Recognition" means the mutual agreement of two or more accrediting authorities to accept each other's findings regarding the ability of environmental laboratories to meet NELAC standards.

"Responsible official" means one of the following, as appropriate:

1. If the laboratory is owned or operated by a private corporation, "responsible official" means (i) a president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated in accordance with corporate procedures.

2. If the laboratory is owned or operated by a partnership, association, or a sole proprietor, "responsible official" means a general partner, officer of the association, or the proprietor, respectively.

3. If the laboratory is owned or operated by a governmental body, "responsible official" means a director or highest official appointed or designated to oversee the operation and performance of the activities of the governmental laboratory.

4. Any person designated as the responsible official by an individual described in subdivision 1, 2 or 3 of this definition provided the designation is in writing, the designation specifies an individual or position with responsibility for the overall operation of the laboratory, and the designation is submitted to DGS-DCLS.

"Sampling" means the act of collection for the purpose of analysis.

"Sanitation district" means a sanitation district created under the provisions of Chapters 3 (§21-141 et seq.) through 5 (§21-291 et seq.) of Title 21 of the Code of Virginia.

"Sewage" means the water-carried human wastes from residences, buildings, industrial establishments or other places together with such industrial wastes and underground, surface, storm, or other water as may be present.

"Standard operating procedure (SOP)" means a written document which details the method of an operation, analysis or action whose techniques and procedures are thoroughly prescribed and which is accepted as the method for performing certain routine or repetitive tasks.

"TCLP" or "toxicity characteristic leachate procedure" means Test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11. This method is used to determine whether a solid waste exhibits the characteristic of toxicity (see 40 CFR 261.24).

"Technical director (however named)" means the person who has overall responsibility for the technical operation of the environmental laboratory and who exercises actual day-to-day supervision of laboratory operation for the appropriate fields of testing and reporting of results. The title of this person may include but is not limited to laboratory director, technical director, laboratory supervisor or laboratory manager.

"Technology" means a specific arrangement of analytical instruments, detection systems, or preparation techniques, or any combination of these elements.

"Test" means a technical operation that consists of the determination of one or more characteristics or performance of a given product, material, equipment, organism, physical phenomenon, process or service according to a specified procedure.

"Test, analysis, measurement or monitoring required [by pursuant to] the Virginia Air Pollution Control Law" means any method of analysis required by the Virginia Air Pollution

Control Law (§10.1-1300 et seq.); by the regulations promulgated under this law (9VAC5), including any method of analysis listed either in the definition of "reference method" in 9VAC5-10-20, or listed or adopted by reference in 9VAC5 [~~30, 9VAC5-40, 9VAC5-50 or 9VAC5-60~~]; or by any permit or order issued under and in accordance with this law and these regulations.

"Test, analysis, measurement or monitoring required [by pursuant to] the Virginia Waste Management Act" means any method of analysis required by the Virginia Waste Management Act (§10.1-1400 et seq.); by the regulations promulgated under this law (9VAC20), including any method of analysis listed or adopted by reference in 9VAC20 [~~60, 9VAC20-80, 9VAC20-101, or 9VAC20-120~~]; or by any permit or order issued under and in accordance with this law and these regulations.

"Test, analysis, measurement or monitoring required [by pursuant to] the Virginia Water Control Law" means any method of analysis required by the Virginia Water Control Law (§62.1-44.2 et seq.); by the regulations promulgated under this law (9VAC25), including any method of analysis listed or adopted by reference in 9VAC25 [~~31, 9VAC25-32, 9VAC25-110, 9VAC25-120, 9VAC25-151, 9VAC25-180, 9VAC25-190, 9VAC25-192, or 9VAC25-210~~]; or by any permit or order issued under and in accordance with this law and these regulations.

"Test method" means an adoption of a scientific technique for [performing] a specific measurement [~~problem~~], as documented in a laboratory standard operating procedure or [as] published by a recognized authority.

"U.S. Environmental Protection Agency (U.S. EPA or EPA)" means the federal government agency with responsibility for protecting, safeguarding and improving the natural environment (i.e., air, water and land) upon which human life depends.

"Virginia Air Pollution Control Law" means [Chapter 13] §10.1-1300 [et seq.] of the Code of Virginia which is titled "Air Pollution Control Board."

["Wastewater" means liquid and water-carried industrial wastes and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities and institutions.]

"Waterworks" means each system of structures and appliances used in connection with the collection, storage, purification, and treatment of water for drinking or domestic use and the distribution thereof to the public, except distribution piping.

["Zooplankton" means microscopic animals that float freely with voluntary movement in a body of water.]

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1VAC30-46-50. Scope of accreditation.

A. Commercial environmental laboratories shall be accredited based on the general laboratory standards set out in Part II (~~9VAC30-46-200~~ 1VAC30-46-200] et seq.) of this chapter and on the specific test methods or analysis, monitoring or measurement required by Virginia Air Pollution Control Law, Virginia Waste Management Act or Virginia Water Control Law, the regulations promulgated under these laws, and by permits and orders issued under and in accordance with these laws and regulations.

B. DGS-DCLS shall review alternative test methods and procedures for accreditation when these are proposed by the applicant laboratory. The provisions of 1VAC30-46-70 E and 1VAC30-46-90 B govern alternative test methods and procedures.

C. Accreditation shall be granted for [a specific field one] or [more] fields of accreditation, including the [matrix, the] technology and methods used by the commercial environmental laboratory, and the individual analytes or analyte groups determined by the particular method.

1VAC30-46-60. General: accreditation requirements.

A. Components of accreditation. The components of accreditation include review of personnel qualifications, on-site assessment, proficiency testing and quality assurance and quality control standards. The criteria for these components, specified in Part II ([~~9VAC30-46-200~~ 1VAC30-46-200] et seq.) of this chapter, shall be fulfilled for accreditation.

B. Individual laboratory sites and mobile laboratories.

1. Individual laboratory sites are subject to the same application process, assessments, and other requirements as environmental laboratories. Any remote laboratory sites are considered separate sites and subject to separate on-site assessments.

2. Laboratories located at the same physical location shall be considered an individual laboratory site if these laboratories are owned [~~or operated~~] by the same person, and have the same technical director and quality system.

3. [Laboratories located at separate, noncontiguous physical locations may request to be considered as an individual laboratory site if these laboratories are owned by the same person and have the same laboratory manager and quality system.

4.] A mobile laboratory, which is configured with equipment to perform environmental analyses, whether associated with a fixed-based laboratory or not, is considered an environmental laboratory and shall require separate accreditation. This accreditation shall remain with the mobile laboratory and be site independent. Moving the configured mobile laboratory to a different site shall not require a new or separate accreditation. Before performing

analyses at each new site, the laboratory shall ensure that instruments and equipment have been checked for performance and have been calibrated.

1VAC30-46-70. Process to apply and obtain accreditation.

A. Duty to apply. All owners [~~or operators~~] of (i) commercial environmental laboratories and (ii) [~~NELAC~~ NELAP] -accredited environmental laboratories [~~located outside Virginia~~] applying for reciprocal accreditation shall apply for accreditation as specified by the provisions of this section.

B. Timely initial applications.

1. Owners [~~or operators~~] of commercial environmental laboratories applying for accreditation under this chapter for the first time shall submit an application to DGS-DCLS no later than [~~180 calendar days after the effective date of this chapter~~ March 30, 2009].

2. Owners [~~or operators~~] of commercial environmental laboratories that come into existence after [~~this chapter becomes effective~~ October 1, 2008,] shall submit an initial application to DGS-DCLS no later than 180 calendar days prior to initiating the provision of environmental laboratory services.

3. Owners [~~or operators~~] of [~~NELAC~~ NELAP] -accredited environmental laboratories [~~located outside Virginia~~].

a. During the initial accreditation period, [~~NELAC~~ NELAP] -accredited environmental laboratories [~~located outside Virginia~~] shall submit an application to DGS-DCLS no later than [~~180 calendar days after the effective date of this chapter~~ March 30, 2009].

b. After the program is established, [~~NELAC~~ NELAP] -accredited environmental laboratories [~~located outside Virginia~~] shall submit an application to DGS-DCLS no later than 180 calendar days prior to initiating the provision of environmental laboratory services [~~in Virginia~~].

C. Timely renewal applications. [~~The owner or operator of either an (i) accredited commercial environmental laboratory or (ii) environmental laboratory holding reciprocal accreditation shall submit an application for renewal of accreditation at least 90 calendar days prior to expiration of accreditation.~~

1. Every two years from the date of initial accreditation, laboratories accredited under this chapter shall submit an application for renewal of accreditation as required by subsection F of this section, including the fees required by 1VAC30-46-150. During this biannual renewal DGS-DCLS shall perform an on-site assessment in addition to a review of the laboratory's application package.

2. Every other year, DGS-DCLS shall renew accreditation for the accredited laboratory provided the laboratory does all of the following:

- a. Maintains compliance with this chapter.
- b. Attests to this compliance by signing the Certificate of Compliance provided under subdivision F 3 of this section.
- c. Reports acceptable proficiency test values for the Fields of Accreditation for which the laboratory held accreditation during the previous year.

The laboratory shall submit the application information required by subdivisions F 1 (except for the quality manual) and F 3 of this section.

3. Renewal application due dates.

- a. The owner of either an (i) accredited commercial environmental laboratory or (ii) environmental laboratory holding reciprocal accreditation shall submit an application for renewal of accreditation under subdivision C 1 of this section at least 90 calendar days prior to expiration of accreditation.
- b. The owner of either an (i) accredited commercial environmental laboratory or (ii) environmental laboratory holding reciprocal accreditation shall submit an application for renewal of accreditation under subdivision C 2 of this section at least 30 calendar days prior to expiration of accreditation.]

D. Responsibilities of the owner [~~or~~ and] operator [when the laboratory is owned by one person and operated by another person].

- 1. When an environmental laboratory is owned by one person but is operated by another person, the operator may submit the application for the owner.
- 2. If the operator fails to submit the application, the owner is not relieved of his responsibility to apply for accreditation.
- 3. While DGS-DCLS may notify environmental laboratories of the date their applications are due, failure of DGS-DCLS to notify does not relieve the owner [~~operator~~] of his obligation to apply under this chapter.

E. Submission of applications for modifications to accreditation. An owner [~~or operator~~] of an accredited environmental laboratory shall follow the process set out in 1VAC30-46-90 B to add a new [~~technology matrix technology/method~~], an analyte or [~~a test method, analyte group~~], modify a test method or institute use of a method [or technology] not in the laboratory's standard operating procedures, including alternative test methods or procedures.

F. Contents of application.

1. Applications shall include the following information and documents:

- a. Legal name of laboratory;
- b. Name of owner of laboratory;
- c. Name of operator of laboratory, if different than owner;
- d. Street address and description of location of laboratory;
- e. Mailing address of laboratory, if different from street address;
- f. Address of owner, if different from laboratory address;
- g. Name, address, telephone number, facsimile number and e-mail, as applicable, of responsible official;
- h. Name, address, telephone number, facsimile number and e-mail, as applicable, of technical director;
- i. Name, address, telephone number, facsimile number and e-mail, as applicable, of designated quality assurance officer;
- j. Name [, title] and telephone number of laboratory contact person;
- k. Laboratory type (e.g., commercial, public wastewater system, mobile);
- l. Laboratory hours of operation;
- m. Fields of accreditation for which the laboratory is seeking accreditation;
- n. Methods employed, including analytes;
- o. The results of the three most recent proficiency test studies;
- p. Quality assurance manual;
- q. Lab identification number (for renewal only); and
- r. For mobile laboratories, a unique vehicle identification number, such as a manufacturer's vehicle identification number (VIN #), serial number, or license number.

2. Fee. The application shall include payment of the fee as specified in 1VAC30-46-150.

3. Certification of compliance.

- a. The application shall include a "Certification of Compliance" statement signed and dated by the quality assurance officer, and a responsible official or the technical director or both.
- b. The certification of compliance shall state: "The applicant understands and acknowledges that the laboratory is required to be continually in compliance

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with the Virginia environmental laboratory accreditation program regulation (1VAC30 Chapter 46) and is subject to the provisions of 1VAC30-46-100 in the event of noncompliance. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the laboratory or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. Submitting false information or data shall result in denial or withdrawal of accreditation. I further certify that I am authorized to sign this application."

G. Completeness determination.

1. DGS-DCLS shall determine whether an application is complete and notify the laboratory of the result of such determination. [~~Except during~~ During] the initial accreditation period, DGS-DCLS shall provide this notice within [~~60~~ 90] calendar days of [~~DGS-DCLS's~~ its] receipt of the [initial] application. [Following the initial accreditation period, DGS-DCLS shall provide this notice as follows:

a. Within 60 calendar days of DGS-DCLS' receipt of a laboratory's initial application.

b. Within 30 calendar days of DGS-DCLS' receipt of a laboratory's renewal application under subdivision C 1 of this section.

c. Within 15 calendar days of DGS-DCLS' receipt of a laboratory's renewal application under subdivision C 2 of this section.]

2. An [initial] application [or an application for renewal under subdivision C 1 of this section] shall be determined complete if it contains all the information required pursuant to subsection F of this section and is sufficient to evaluate the laboratory prior to the on-site assessment. [DGS-DCLS shall consider an application for renewal under subdivision C 2 of this section to be complete if it contains the information required under subdivision C 2 of this section] Designating an application complete does not preclude DGS-DCLS from requesting or accepting additional information.

3. If DGS-DCLS determines that an application is incomplete, DGS-DCLS's notification of such determination shall explain why the application is incomplete and specify the additional information needed to make the application complete.

4. Except during the initial accreditation period, if no determination is made within 60 calendar days of DGS-

DCLS's receipt of either (i) the application or (ii) additional information, in the case of an application determined to be incomplete, the application shall be determined to be complete. [During the initial accreditation period, the time period shall be 90 calendar days.]

5. [If the laboratory has not submitted the required additional information within 90 days of receiving a notice from] DGS-DCLS [~~may deny any application from a laboratory and require the laboratory to submit a new application if the laboratory does not submit additional information required by DGS-DCLS within 90 days of the mailing date of the notice that requires additional information~~ requesting additional information, DGS-DCLS may return the incomplete application and inform the laboratory that the application cannot be processed. The laboratory may then submit a new application].

H. Grant of interim accreditation pending final determination on application.

1. DGS-DCLS shall grant [~~a laboratory~~] interim accreditation status [to laboratories applying initially or for renewal under subdivision C 1 of this section] under the following conditions:

a. The laboratory's application is determined to be complete;

b. The laboratory has satisfied all the requirements for accreditation, including all requests for additional information, with the exception of on-site assessment; and

c. DGS-DCLS is unable to schedule the on-site assessment within 90 days of its determination that the application is complete [~~and that the laboratory has satisfied all other requirements for accreditation~~ (for initial applications) or before the laboratory's accreditation expires (for renewal applications under subdivision C 1 of this section)].

[2. DGS-DCLS shall grant interim accreditation status to a laboratory renewing its accreditation under subdivision C 2 of this section during its review of the renewal application if the owner has submitted a complete application as required under subdivision C 2 of this section.]

[~~2. 3.~~] A laboratory with interim accreditation [status] shall have the same rights and status as a laboratory that has been granted accreditation by DGS-DCLS.

[~~3. 4.~~] Interim accreditation [~~expires when DGS-DCLS issues a final determination on accreditation~~ status shall not exceed 12 months].

I. On-site assessment.

[1.] An on-site assessment shall be performed and the follow-up and reporting procedures for such assessments

shall be completed in accordance with Part II [~~9VAC30-46-200~~ (1VAC30-46-200) et seq.] of this chapter prior to issuance of a final determination on accreditation.

[2. Alternative on-site assessment option. If DGS-DCLS is unable to schedule an on-site assessment under the conditions of subdivision H 1 c of this section, the owner of the applicant laboratory may use third-party on-site assessors instead of DGS-DCLS on-site assessors under the following conditions:

- a. The third-party on-site assessors are on a DGS-DCLS-approved list of NELAC-trained on-site assessors, and
- b. The owner of the applicant laboratory agrees to pay the third-party on-site assessors.]

J. Final determination on accreditation.

1. Upon completion of the accreditation review process and corrective action, if any, DGS-DCLS shall grant accreditation in accordance with subsection K of this section or deny accreditation in accordance with subsection L of this section.

2. Except during the initial accreditation period, DGS-DCLS shall complete action on a laboratory's application within nine months from the time [~~an application is determined to be complete~~ a completed application is received from the laboratory].

3. During the initial accreditation period, DGS-DCLS shall notify applicants of their interim accreditation status under subsection H of this section only after all applications have been reviewed and are determined to be complete.

4. During the final approval process of the initial accreditation period, DGS-DCLS shall notify applicants of their final accreditation status only after all timely and complete applications have been reviewed, all on-site assessments have been completed, and accreditation status has been determined for all applicant laboratories.

5. During the final approval process, DGS-DCLS shall release on-site assessment reports to applicants at the time that applicants are notified of their final accreditation status. [~~If a laboratory is found to have deficiencies during the on-site assessment, DGS DCLS may provide comments and recommendations aimed at helping the laboratory improve.~~]

K. Grant of accreditation.

1. When a laboratory meets the requirements specified for receiving accreditation, DGS-DCLS shall issue a certificate to the laboratory. The certificate shall be sent to the technical director, and the responsible official shall be notified.

2. The [~~certificate shall be signed by the~~] director of DGS-DCLS [~~shall sign the certificate~~]. The certificate shall be transmitted as a sealed and dated document.

3. The certificate shall include the following information:

- a. Name of owner [~~or operator~~] of laboratory;
- [~~b.~~ Name of operator of laboratory, if different from owner;]
- [~~b. c.~~ Name of responsible official;
- [~~e. d.~~ Address and location of laboratory;
- [~~d. e.~~ Laboratory identification number;
- [~~e. f.~~ Fields of accreditation (matrix, technology/method and analyte/analyte group) for which accreditation is granted;
- [~~f. g.~~ Any addenda or attachments; and
- [~~g. h.~~ Issuance date and expiration date.

4. National Environmental Laboratory Accreditation Program (NELAP) status.

- a. Laboratories accredited under this chapter are accredited under the standards of the National Environmental Laboratory Accreditation Conference.
- b. The certificate of accreditation shall contain the NELAP insignia.
- c. Accredited laboratories shall comply with the provisions of 1VAC30-46-130 with regard to the use of these certificates and their status as NELAP-accredited laboratories.

5. The laboratory shall post the most recent certificate of accreditation and any addenda to the certificate issued by DGS-DCLS in a prominent place in the laboratory facility.

6. Accreditation shall expire [~~two years~~ one year] after the date on which accreditation is granted.

L. Denial of accreditation.

1. DGS-DCLS shall deny accreditation to an environmental laboratory in total if the laboratory [~~owner or an employee falsifies~~ is found to be falsifying] any data or [~~provides~~ providing] false information to support accreditation.

2. Denial of accreditation in total or in part.

- a. DGS-DCLS may deny accreditation to an environmental laboratory in total or in part if the laboratory [~~owner or an employee~~] fails to do any of the following:

(1) Pay the required fees;

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(2) Employ laboratory staff to meet the personnel qualifications as required by Part II (1VAC30-46-200 et seq.) of this chapter;

(3) Successfully analyze and report proficiency testing samples as required by Part II of this chapter;

(4) Submit a corrective action report in accordance with Part II of this chapter in response to a deficiency report from the on-site assessment team within the required 30 calendar days;

(5) Implement the corrective actions detailed in the corrective action report within the time frame specified by DGS-DCLS;

(6) Pass required on-site assessment as specified in Part II of this chapter;

(7) Implement a quality system as defined in Part II of this chapter.

b. DGS-DCLS may deny accreditation to an environmental laboratory in total or in part if the laboratory's application is not determined to be complete within 90 days following notification of incompleteness because the laboratory is delinquent in submitting information required by DGS-DCLS in accordance with this chapter.

c. DGS-DCLS may deny accreditation to an environmental laboratory in total or in part if the DGS-DCLS on-site assessment team is unable to carry out the on-site assessment pursuant to 1VAC30-46-210 B because [~~an employee, owner, or other a~~] representative of the environmental laboratory denied the team entry during [the laboratory's] normal business hours [that it specified in the laboratory application].

~~3. [To deny accreditation, DGS DCLS shall provide by certified mail written notification of denial to the responsible officer and the technical director of the laboratory, including a detailed explanation of the reason for denial and notice of the right to appeal such denial. DGS-DCLS shall follow the process specified in 1VAC30-46-110 when denying accreditation to an environmental laboratory.]~~

M. Reapplication following denial of accreditation.

1. Upon denial of accreditation, the laboratory shall wait six months before reapplying for accreditation.

2. DGS-DCLS shall not waive application fees for a laboratory reapplying for accreditation.

1VAC30-46-80. Maintaining accreditation.

A. Accreditation remains in effect until withdrawn by DGS-DCLS, withdrawn voluntarily at the written request of the accredited laboratory, or expiration of the accreditation period. To maintain accreditation, the accredited laboratory

shall comply with the elements listed in this section and in 1VAC30-46-90.

B. Quality systems. A laboratory seeking to maintain accreditation under this regulation shall assure consistency and promote the use of quality assurance and quality control procedures. Part II ([~~9VAC30-46-200~~ 1VAC30-46-200] et seq.) of this chapter specifies the quality assurance and quality control requirements that shall be met to maintain accreditation. The laboratory shall establish and maintain a quality system based on the required elements contained in Part II [~~and appropriate to the type, range and volume of environmental testing activities it undertakes~~].

C. Proficiency tests. Laboratories seeking to maintain accreditation under this regulation shall perform proficiency tests as required under Part II ([~~9VAC30-46-200~~ 1VAC30-46-200] et seq.) of this chapter.

D. Recordkeeping and retention. All laboratory records associated with accreditation parameters shall be kept as provided by the requirements for records under Part II [~~9VAC30-46-200~~ 1VAC30-46-200] et seq.) of this chapter. These records shall be maintained for a minimum of five years unless designated for a longer period by another regulation or authority. All such records shall be available to DGS-DCLS upon request.

1VAC30-46-90. [~~Changing Notifications and changes to~~ accreditation [~~elements and~~] status.

A. Changes to key accreditation criteria. [~~1.~~] The accredited laboratory shall notify DGS-DCLS [~~as set out in subdivision 2 of this subsection~~] in writing of any changes in key accreditation criteria within 30 calendar days of the change. Key accreditation criteria are laboratory ownership, location, key personnel, [~~test methods, analytes,~~] and major instrumentation.

~~[2. The laboratory may initially notify DGS-DCLS of any change to key accreditation criteria by e mail, facsimile or telephone. The notification by e mail, facsimile or telephone subsequently shall be submitted in writing.~~

~~3. As specified in subsection B of this section, changes to key accreditation criteria that affect the laboratory's scope of accreditation require review and approval by DGS-DCLS in advance of the laboratory's making the change.]~~

B. Changes to scope of accreditation.

1. DGS-DCLS [~~shall review and may~~] approve [~~the addition of a laboratory's application to add~~] a new [~~matrix,~~] technology, [~~an~~] analyte, or [~~a~~] test method to a laboratory's scope of accreditation [or otherwise modify the laboratory's scope of accreditation by performing a data review].

2. To [~~begin the process of review apply~~], the owner [or operator] of the accredited laboratory [~~that wants to add~~

to the laboratory's scope of accreditation] shall submit the following [~~application materials~~] to DGS-DCLS:

a. A letter signed by the owner [~~or operator~~] that briefly summarizes the addition to be made to the laboratory's scope of accreditation.

b. Pertinent information demonstrating [~~that the laboratory is capable of performing the test method or using the technology to be added~~ the laboratory's capability to perform the additional matrix, technology/method, or analyte/analyte group,] such as proficiency testing performance and quality control performance.

c. A written standard operating procedure covering the new ~~method, analyte, or technology~~ [matrix, technology/method or analyte/analyte group].

[~~DGS DCLS may request additional material to complete its review.~~]

3. DGS-DCLS may approve a laboratory's application for modification to its scope of accreditation by performing a review of the application materials submitted, without an on-site assessment. [~~A#~~ The] addition of a new technology or test method requiring [the use of] specific equipment may require an on-site assessment. Other reviews of performance and documentation may be carried out by DGS-DCLS, depending on the modification for which the laboratory applies.

4. [Within 90 calendar days of the receipt of the application from the accredited environmental laboratory, DGS-DCLS shall review and determine whether the proposed modification may be approved.

5.] If the proposed modification to the laboratory's scope of accreditation is approved, DGS-DCLS shall amend the laboratory's certificate of accreditation.

C. Change of ownership or location of laboratory.

1. The accredited laboratory shall submit a written notification to DGS-DCLS of the change of ownership or location of the laboratory within 30 calendar days of the change. [This requirement applies only to fixed-based and not mobile laboratories.]

2. Accreditation may be transferred when the legal status or ownership of a accredited laboratory changes [~~without affecting its~~ as long as the transfer does not affect the laboratory's] personnel, equipment, [~~and facilities or organization~~].

3. [~~DGS DCLS may charge a transfer fee and may conduct an on-site assessment to verify the effects of such changes on laboratory performance.~~ If the laboratory's personnel, equipment, or organization are affected by the change of legal status or ownership, DGS-DCLS may

require reaccreditation or reapplication in any or all of the categories for which the laboratory is accredited.

4. DGS-DCLS may require an on-site assessment depending on the nature of the change of legal status or ownership. DGS-DCLS shall determine the elements of any on-site assessment required.]

[~~4- 5.~~] When [~~a laboratory changes~~] there is a change in] ownership, the new [laboratory] owner [of the accredited laboratory] shall assure [~~that the history of the laboratory's ownership can be traced through laboratory identification numbers~~ historical traceability of the laboratory accreditation numbers.]

[~~5- 6.~~] When there is a change in ownership, [the new owner of the accredited laboratory shall keep] all records and analyses performed by the previous owner under his scope of accreditation [~~shall be kept~~] for a period of five years. [~~As required under 1VAC30 46 80 D, all such records shall be made available to DGS DCLS upon request.~~ These records and analyses are subject to inspection by DGS-DCLS during this five-year period. This provision applies regardless of change of ownership, accountability or liability.]

D. Voluntary withdrawal. Any environmental laboratory owner [~~or operator~~] who wishes to withdraw the laboratory from its accreditation status or from being accredited, in total or in part, shall submit written notification to DGS-DCLS no later than 30 calendar days before the end of the laboratory's accreditation term. Within 30 calendar days, DGS-DCLS shall provide the laboratory with a written notice of withdrawal.

1VAC30-46-100. Withdrawal of accreditation.

A. DGS-DCLS shall withdraw accreditation from an environmental laboratory in total [~~for the following reasons if the laboratory is found to be falsifying any data or providing false information to support certification~~]:

[~~1. Submittal by the laboratory owner or employee of proficiency test sample results generated by another laboratory as its own.~~

2. Falsification by a laboratory owner or employee of any data or the provision of false information by any laboratory owner or employee to support accreditation.

3. Conviction of the laboratory owner or employee of charges relating to the falsification of any report concerning a laboratory analysis.]

B. DGS-DCLS may withdraw accreditation from an environmental laboratory in part or in total when the laboratory [~~owner or an employee~~] has failed to do any of the following:

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1. Participate in the proficiency testing program as required by 1VAC30-46-210 C.

2. Complete proficiency testing studies and maintain a history of at least two successful proficiency testing studies for each affected accredited field of testing out of the three most recent proficiency testing studies as defined in 1VAC30-46-210 C.

3. Maintain a quality system as defined in 1VAC30-46-210 D.

4. Employ staff that meet the personnel qualifications of 1VAC30-46-210 A.

5. Submit an acceptable corrective action report after two opportunities as specified in 1VAC30-46-210 B.

6. Implement corrective action specified in the laboratory's corrective action report as set out under 1VAC30-46-210 B.

7. Notify DGS-DCLS of any changes in key accreditation criteria as set forth in 1VAC30-46-90.

8. Use correct and authorized references to the laboratory's accreditation status or that of DGS-DCLS in the laboratory's documentation and advertising as set forth in 1VAC30-46-130.

C. [DGS-DCLS shall follow the process specified in 1VAC30-46-110 when withdrawing accreditation from an environmental laboratory.

D.] Responsibilities of the environmental laboratory and DGS-DCLS when accreditation has been withdrawn.

1. Laboratories that lose their accreditation in full shall return their certificate to DGS-DCLS.

2. If a laboratory loses accreditation in part, an addendum to the certificate shall be issued by DGS-DCLS to the laboratory.

3. The laboratory shall discontinue the use of all materials that contain either a reference to the environmental laboratory's past accreditation status or that display the NELAC/NELAP logo. These materials may include catalogs, advertising, business solicitations, proposals, quotations, laboratory analytical results or other materials.

[~~D.~~ E.] After correcting the reason or cause for the withdrawal of accreditation under 1VAC30-46-100 A or B, the laboratory owner [~~or operator~~] may reapply for accreditation.

1VAC30-46-110. [Appeal Procedures to deny accreditation, to withdraw accreditation, and appeal] procedures.

A. [If DGS-DCLS believes it has grounds to deny accreditation to or withdraw accreditation from an environmental laboratory,] DGS-DCLS shall notify [~~an~~ the]

environmental laboratory in writing of its [~~decision to deny accreditation to or to withdraw accreditation from an environmental laboratory~~ intent to hold an informal fact finding under §2.2-4019 of the Code of Virginia in order to make a decision on the denial of accreditation or withdrawal of accreditation. DGS-DCLS shall send this notification by certified mail to the responsible official and provide a copy to the technical director of the environmental laboratory. The notice of informal fact finding shall provide a detailed explanation of the basis for the notice].

B. [~~All appeals taken from actions of the DGS-DCLS director relative to the provisions of this chapter shall be governed by the Virginia Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).~~ Following the informal fact finding held pursuant to §2.2-4019 of the Code of Virginia, the director shall render a decision regarding accreditation, and shall send this notification by certified mail to the responsible official and provide a copy to the technical director of the environmental laboratory. If the director's decision is adverse to the environmental laboratory, the responsible official may appeal this decision in accordance with §2.2-4026 of the Code of Virginia and Part 2A of the Rules of the Supreme Court of Virginia.

C. The provisions of this section do not preclude informal discussions between DGS-DCLS and any environmental laboratory that has been notified of a possible denial or withdrawal of accreditation. These informal discussions to resolve the concerns that prompted the notice shall be held prior to the informal fact finding proceeding.

D. The accreditation status of an environmental laboratory appealing withdrawal of accreditation shall not change pending the final decision of the appeals filed under the Virginia Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia) and Part 2A of the Rules of the Supreme Court of Virginia.]

1VAC30-46-120. National accreditation database.

DGS-DCLS shall provide to NELAP the following information about environmental laboratories accredited under this chapter: (i) technical director's name; (ii) ownership and location of laboratory and any changes; (iii) key accreditation criteria and any changes; (iv) interim, as well as final, accreditation status; and (v) on-site assessment reports.

1VAC30-46-130. Use of accreditation status by environmental laboratories accredited under this chapter.

A. The owner [~~or operator~~] of an environmental laboratory accredited under this chapter shall not misrepresent the laboratory's fields of accreditation or its accreditation status on any document. This includes laboratory reports, catalogs, advertising, business solicitations, proposals, quotations or other materials.

B. Environmental laboratories accredited under this chapter shall comply with all of the following:

1. Post or display their most recent accreditation certificate or their fields of accreditation in a prominent place in the laboratory facility.
2. Make accurate statements concerning their fields of accreditation and accreditation status.
3. Accompany DGS-DCLS's name or the NELAC/NELAP logo or both with at least the phrase "NELAP-accredited" and the laboratory's identification number or other identifier when DGS-DCLS's name is used on general literature such as catalogs, advertising, business solicitations, proposals, quotations, laboratory analytical reports or other materials.
4. Not use their accreditation certificate, their accreditation status or the NELAC/NELAP logo to imply endorsement by DGS-DCLS.

C. The owners [~~or operators~~] of laboratories accredited under this chapter who choose to (i) use DGS-DCLS's name; (ii) make reference to its NELAP accreditation status; or (iii) use the NELAC/NELAP logo in any catalogs, advertising, business solicitations, proposals, quotations, laboratory analytical reports or other materials, shall comply with both of the following:

1. Distinguish between proposed testing for which the laboratory is accredited and the proposed testing for which the laboratory is not accredited.
2. Include the laboratory's identification number or other identifier.

1VAC30-46-140. Reciprocal accreditation.

A. DGS-DCLS, when recognized by NELAP as a primary accrediting authority, may grant reciprocal accreditation to an environmental laboratory [~~located outside Virginia~~] that holds a current accreditation from another NELAP-recognized primary accrediting authority.

B. The owner [~~or operator~~] of a NELAP-accredited environmental laboratory that seeks accreditation under this chapter shall apply as specified in 1VAC30-46-70.

C. The owner [~~or operator~~] of the applicant laboratory shall pay the fee required by 1VAC30-46-150.

D. DGS-DCLS shall not require a NELAP-accredited environmental laboratory that seeks accreditation under this section to meet any additional proficiency testing, quality assurance, or on-site assessment requirements for the fields of accreditation for which the laboratory holds primary NELAP accreditation.

E. DGS-DCLS shall consider only the current certificate of accreditation issued by the NELAP-recognized primary accrediting authority.

F. DGS-DCLS shall do the following:

1. Grant reciprocal accreditation for only the fields of accreditation for which the laboratory holds current primary NELAP accreditation.
2. Except during the initial accreditation period, grant reciprocal accreditation and issue certificates to an applicant laboratory within 30 calendar days of receipt of the laboratory's application.

G. Potential nonconformance issues.

1. If DGS-DCLS notes any potential nonconformance with the NELAC standards by a laboratory during the initial application process for reciprocal accreditation or for a laboratory that already has been granted NELAP accreditation through reciprocal accreditation, DGS-DCLS shall immediately notify, in writing, the applicable NELAP-recognized primary accrediting authority and the laboratory. The notification shall cite the applicable sections within the NELAC standards for which nonconformance by the laboratory has been noted.

2. If the alleged nonconformance is noted during the initial application process for reciprocal accreditation, final action on the application for reciprocal accreditation shall not be taken until the alleged nonconformance issue has been resolved.

3. If the alleged nonconformance is noted after reciprocal accreditation has been granted, the laboratory shall maintain its current accreditation status until the alleged nonconformance issue has been resolved.

4. If DGS-DCLS does not believe the primary accrediting authority has taken timely and appropriate action on the potential nonconformance, DGS-DCLS shall notify the NELAP director of its concerns.

1VAC30-46-150. Fees.

A. General.

1. Fees shall be submitted with all applications [, including reapplications,] for accreditation [and all renewal applications for accreditation under 1VAC30-46-70 C 1]. Applications shall not be designated as complete until the fee is received by DGS-DCLS.

2. Fees shall be nonrefundable.

3. An environmental laboratory applying for reciprocal accreditation under this chapter shall pay the same fee as other laboratories subject to this chapter.

B. Fee computation.

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1. The fee shall be the total of the base fee and the test category fees.

2. The test category fees cover categories for the test methods to be accredited as specified in the laboratory's application.

3. If the total of the base fee and the test category fees is more than the maximum fee, the laboratory shall pay the maximum fee.

~~[C. Maximum fee. The maximum fee shall be \$4,200.~~

~~D. C.] Base fee. The base fee shall be [\$2,100 \$1,700].~~

~~[D. Maximum fee. The maximum fee shall be \$5,200.]~~

E. Test category fees.

1. Fees shall be charged for each category of tests to be accredited.

2. The fee for each category includes one or more analytical methods unless otherwise specified. With the exception of the test categories labeled oxygen demand and physical, test categories related to test methods for water are defined by 40 CFR 136.3.

3. Fees.

TEST CATEGORY	FEE
Oxygen demand (BOD or COD)	[\$300 \$375]
Bacteriology	[\$300 \$375]
Inorganic chemistry, fewer than four methods	[\$300 \$375]
Inorganic chemistry, four or more methods	[\$600 \$750]
Chemistry metals, [fewer than four one - two] methods	[\$300 \$450]
Chemistry metals, [four or] more [than two] methods	[\$600 \$1,000]
Organic chemistry, fewer than four methods	[\$350 \$600]
Organic chemistry, four or more [methods]	[\$700 \$1,200]
[Whole effluent Aquatic] toxicity, acute methods only	[\$300 \$400]
[Whole effluent Aquatic] toxicity, acute and chronic methods	[\$600 \$700]
Radiochemical	[\$900 \$1,000]
Physical	[\$300 \$375]

F. Additional fees. [Additional fees shall be charged to laboratories applying for the following: (i) modification to scope of accreditation under 1VAC30-46-90 B, (ii) transfer of ownership under 1VAC30-46-90 C, (iii) request that multiple, noncontiguous laboratory sites be considered as one site under 1VAC30-46-60 B 3, or (iv) petition for a variance under 1VAC30-46-160.]

1. For any accredited environmental laboratory that applies to modify its scope of accreditation as specified under 1VAC30-46-90 B, DGS-DCLS shall assess a fee determined by the method in [~~subdivision 3~~ subsection G] of this [~~subsection~~ section] .

2. Under 1VAC30-46-90 C, DGS-DCLS may charge a transfer fee to a certified laboratory that transfers ownership. [~~If DGS DCLS determines that an on site assessment is necessary to evaluate the effect of the transfer of ownership, DGS DCLS shall assess a fee determined by the method in subdivision 3 of this subsection. A fee shall be charged if DGS-DCLS (i) needs to review documentation sent by the laboratory about the transfer of ownership or (ii) determines that an on-site assessment is necessary to evaluate the effect of the transfer of ownership. DGS-DCLS shall assess a fee determined by the method in subsection G of this section.] If DGS-DCLS determines that a fee should be charged, the fee shall be a minimum of \$100 and a maximum of \$1,000. [~~If, under 1VAC30-46-90 C, DGS-DCLS determines that the change of ownership or location of laboratory requires reaccreditation of or reapplication by the laboratory, the laboratory shall pay the application fee required under this section.~~~~

3. Under 1VAC30-46-60 B 3, the owner of multiple non-contiguous laboratories may request that DGS-DCLS consider these laboratories to be one site. If, as a result of the request being granted, DGS-DCLS needs to perform multiple on-site assessments, DGS-DCLS shall charge a fee for the additional on-site assessments. The fee shall be the sum of reasonable travel costs and labor charges for the additional on-site assessments. The labor charges will be determined following the method in subsection G of this section.

4. Under 1VAC30-46-160, any person regulated by this chapter may petition the director to grant a variance from any requirement of this chapter. DGS-DCLS shall charge a fee for the time needed to review the petition, including any on-site assessment required. The fee shall be determined by the method specified in subsection G of this section.]

[~~3. G.] Fee determination.~~

[~~a. 1.] The fee shall be the sum of the total hourly charges for all reviewers plus any on-site review costs incurred.~~

~~[b. 2.]~~ An hourly charge per reviewer shall be determined by (i) obtaining a yearly cost by multiplying the reviewer's annual salary by 1.35 (accounts for overhead such as taxes and insurance) and then (ii) dividing the yearly cost by 1,642 (number of annual hours established by ~~[DGS fiscal services~~ Fiscal Services, DGS,] for billing purposes).

~~[e. 3.]~~ The charge per reviewer shall be determined by multiplying the number of hours expended in the review by the reviewer's hourly charge.

~~[d. 4.]~~ If an on-site review is required, travel time and on-site review time shall be charged at the same hourly charge per reviewer, and any travel expenses shall be added.

~~[G. On site assessment fees. When, with the concurrence of the applicant laboratory, DGS DCLS uses approved, third-party on site assessors, the cost of the on site assessment shall be paid by the applicant.]~~ H. Out-of-state laboratories – travel costs. The owner of an environmental laboratory located in another state who applies for accreditation under this chapter shall also pay a fee equal to the reasonable travel costs associated with conducting an on-site assessment at the laboratory. Reasonable travel costs include transportation, lodging, per diem, and telephone and duplication charges.

I. DGS-DCLS shall derive the travel costs charged under subsections G and H of this section from the Commonwealth of Virginia reimbursement allowances and rates for lodging, per diem, and mileage.]

1VAC30-46-160. Petitioning for a variance.

A. Any person regulated by this chapter may petition the director to grant a variance from any requirement of this chapter. Any person submitting a petition to the director ~~[must shall]~~ meet the provisions of this section. Any petition submitted to the director is subject to the Virginia Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

B. The petition shall be submitted to the director by certified mail and shall include:

1. The petitioner's name and address;
2. A statement of the petitioner's interest in the proposed action;
3. A description of desired action and a citation of the regulation from which a variance is requested;
4. A description of need and justification for the proposed action, including impact of the proposed action on the laboratory's operation;
5. Information demonstrating that the requested variance will meet the purposes and objectives of the relevant regulatory provision and of §2.2-1105 of the Code of Virginia (Environmental Laboratory Certification Program);

6. The duration of the variance, if applicable;

7. The potential impact of the variance on public health or the environment;

8. Other information believed by the applicant to be pertinent; and

9. The following statement signed by the petitioner or authorized representative: "I certify that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

C. Petition processing.

1. After receiving a petition that includes the information required in subsection B of this section, the director will determine whether the information received is sufficient to render the decision. If the information is deemed insufficient, the director will specify additional information needed and request that it be furnished.

2. The petitioner may submit the additional information requested, or may attempt to show that no reasonable basis exists for additional information. If the director agrees that no reasonable basis exists for the request for additional information, he will act in accordance with subsection D of this section. If the director ~~[continues to believe finds]~~ that a reasonable basis exists to require the submission of such information, he will proceed with the denial action in accordance with the Administrative Process Act.

D. Public review of tentative decision. The director will evaluate the application and issue a draft notice tentatively denying the petition, granting the variance as requested, or granting a modified or partial variance. Notification of this tentative decision will be published in the Virginia Register of Regulations. The director will accept comment on the tentative decision for 30 days, and shall hold a public hearing if a request is received or at his discretion if there is no request. The director will issue a final decision after receipt of comments and after the hearing (if any).

E. Conditions for granting variance request or a modified variance.

1. The director may grant the variance if the applicant demonstrates to the satisfaction of the director that:

- a. The proposed variance will meet the goals and purposes of the provisions from which a variance is sought; ~~[and]~~

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b. The variance does not conflict with federal or state law or regulations.

2. If the director grants a variance request, the notice to the petitioner shall provide that the variance may be terminated upon a finding by the director that the petitioner has failed to comply with any requirements of the variance.

3. When a modified variance is granted, the director may:

a. Specify the termination date of the variance;

b. Include a schedule for:

(1) Compliance, including increments of progress, by the laboratory with each requirement of the variance; and

(2) Implementation by the laboratory of such measures as the director finds necessary in order that the variance may be granted.

F. Decisions to grant or deny a petition [in whole or in part, or to modify or terminate a variance] are subject to the provisions of Article 3 (§2.2-4018 et seq.) of the Virginia Administrative Process Act.

1VAC30-46-170. (Reserved.)

1VAC30-46-180. (Reserved.)

1VAC30-46-190. (Reserved.)

Part II Standards

1VAC30-46-200. Incorporation of NELAC standards.

A. The [2002 2003] National Environmental Laboratory Accreditation Conference (NELAC) standards approved [July 12, 2002 June 5, 2003] , as specified in 1VAC30-46-210 are incorporated by reference into this chapter.

B. Laboratories applying for accreditation and accredited under this chapter shall comply with the [2002 2003] NELAC standards incorporated by reference into 1VAC30-46-210.

[C. The requirements of Chapter 4 of the 2003 NELAC standards, Accreditation Process, are incorporated by reference into this chapter unless the requirements are (i) already addressed in this chapter, (ii) superseded by Virginia law, or (iii) incorporated by reference into 1VAC30-46-210.]

1VAC30-46-210. Standards for accreditation.

A. Standards for personnel qualifications. The standards for personnel qualifications are the following provisions of the National Environmental Laboratory Accreditation Conference (NELAC) standards as incorporated by reference into this part: Chapter 4, Accreditation Process, specifically, Components of Accreditation and Personnel Qualifications [(4.1.1) and Chapter 5, Quality Systems, specifically, Technical Requirements - Personnel (5.5.2)].

B. Standards for on-site assessment. The standards for on-site assessment are the following provisions of the NELAC standards as incorporated by reference into this part.

1. Chapter 3, On-site Assessment [~~specifically, On site Assessment Personnel; Frequency and Types of On-site Assessments; Preassessment Procedures; Assessment Procedures; Standards for Assessment; and Documentation of On-site Assessment.~~] with one exception. Subsection 3.4.5, Confidential Business Information (CBI) Considerations, shall not be incorporated by reference into this part.

2. Chapter 4, Accreditation Process, specifically, On-site Assessments and Corrective Action Reports in Response to On-site Assessment [(4.1.2 and 4.1.3)].

C. Standards for proficiency testing. The standards for proficiency testing are the following provisions of the NELAC standards as incorporated by reference into this part.

1. Chapter 2, Proficiency Testing, specifically, [Introduction, Scope, and Applicability;] Major PT Groups and Their Responsibilities [~~Laboratories and Accrediting Authorities~~] ; Laboratory Enrollment in Proficiency Testing Programs; Requirements for Laboratory Testing of PT Study Samples; and PT Criteria for Laboratory Accreditation [(2.1, 2.2, 2.4 through 2.7)].

2. Chapter 4, Accreditation Process, specifically, Proficiency Testing Samples [(4.1.4)].

D. Standards for quality systems.

1. The standards for quality systems are the following provisions of the NELAC standards as incorporated by reference into this part: (i) Chapter 4, specifically, Accountability for Analytical Standards and (ii) Chapter 5, Quality Systems.

2. Quality systems - scope. Chapter 5 of the NELAC standards sets out the scope of quality systems requirements. These provisions provide an overview to major aspects of the accreditation process and are set out below for emphasis:

a. Chapter 5 includes all quality assurance policies and quality control procedures [~~which that~~] shall be delineated in a quality manual and followed to ensure and document the quality of the analytical data. Laboratories seeking accreditation shall assure implementation of all quality assurance policies and the essential applicable quality control procedures specified in this chapter. The quality assurance policies, which establish essential quality control procedures, are applicable to environmental laboratories regardless of size and complexity.

b. The intent of Chapter 5 is to provide sufficient detail concerning quality management requirements so that

DGS-DCLS can evaluate environmental laboratories consistently and uniformly.

c. Chapter 5 sets out the general requirements that a laboratory has to successfully demonstrate to be recognized as competent to carry out specific environmental tests.

d. If more stringent standards or requirements are included in a mandated test method or by regulation, the laboratory shall demonstrate that such requirements are met. If it is not clear which [standards or] requirements are more stringent, the standard [or requirement] from the method or regulation is to be followed.

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 [~~Accreditation~~ Certification] of Environmental Laboratories [~~under 1VAC30-46 (with instructions), eff. xx/xx~~, DGS-DCLS (eff. 10/08)].

DOCUMENTS INCORPORATED BY REFERENCE

[2003] National Environmental Laboratory Accreditation Conference [(NELAC)] Standards, EPA/600/R-04/003, Approved [~~July 12, 2002~~ at Ninth NELAC Annual Meeting, June 5, 2003].

VA.R. Doc. No. R98-312; Filed July 16, 2008, 1:37 p.m.

TREASURY BOARD

Final Regulation

REGISTRAR'S NOTICE: The following model public participations are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

Titles of Regulations: 1VAC75-10. Public Participation Guidelines for the Department of the Treasury and Treasury Board (repealing 1VAC75-10-10 through 1VAC75-10-40).

1VAC75-11. Public Participation Guidelines (adding 1VAC75-11-10 through 1VAC75-11-110).

Statutory Authority: §§2.2-2416 and 2.2-4007.02 of the Code of Virginia.

Effective Date: September 17, 2008.

Agency Contact: Harold E. Moore, Director of Financial Policy, Department of the Treasury, 101 North 14th Street,

3rd Floor, Richmond, VA 23219, telephone (804) 371-6013, FAX (804) 225-3187, or email harold.moore@trs.virginia.gov.

Summary:

The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.

This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) proving that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.

CHAPTER 11

PUBLIC PARTICIPATION GUIDELINES

Part I

Purpose and Definitions

1VAC75-11-10. Purpose.

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

1VAC75-11-20. Definitions.

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

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

"Agency" means the Department of the Treasury or the Treasury Board (as appropriate), which is the unit of state

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government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

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

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

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

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

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

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

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

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

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

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

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

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice

of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

Part II

Notification of Interested Persons

1VAC75-11-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

1VAC75-11-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 1VAC75-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).

2. A notice of the comment period on a proposed, a re-proposed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.

3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III Public Participation Procedures

1VAC75-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final

adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

1VAC75-11-60. Petition for rulemaking.

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;

2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and

3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

1VAC75-11-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

1VAC75-11-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

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B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or
3. The agency determines that resolution of a controversy is unlikely.

1VAC75-11-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

1VAC75-11-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;
2. The Governor directs the agency to hold a public hearing; or
3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

1VAC75-11-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their

effectiveness, efficiency, necessity, clarity, and cost of compliance; and

2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R08-1420; Filed July 30, 2008, 11:21 a.m.

TITLE 2. AGRICULTURE

STATE BOARD OF AGRICULTURE AND CONSUMER SERVICES

Final Regulation

Title of Regulation: 2VAC5-206. Regulation for Scrapie Eradication (adding 2VAC5-206-10 through 2VAC5-206-50).

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

Effective Date: October 3, 2008.

Agency Contact: Colleen Calderwood, D.V.M., Program Manager, Office of Veterinary Services, Department of Agriculture and Consumer Services, P. O. Box 1163, Richmond, VA 23218, telephone (804) 692-0601, FAX (804) 371-2380, TTY (800) 828-1120, or email colleen.calderwood@vdacs.virginia.gov.

Summary:

The purpose of this regulation is to eradicate scrapie in Virginia goats and sheep. The federal regulation that became effective in September 2001 restricts interstate movement of sheep and goats from states that have not initiated intrastate regulatory action concerning scrapie eradication. Virginia has been allowed to maintain its status as a scrapie "consistent" state by USDA, based on actions taken through the Administrative Process Act, in promulgation of a new regulation for the eradication of scrapie.

Amendments were made to the proposed regulation to clarify the definitions for consistency under 9 CFR 54.2. The U.S. Department of Agriculture, Animal and Plant Health Inspection Service (USDA/APHIS) will execute cooperative agreements and/or memoranda of understanding with the animal health agencies of any state in order to cooperatively administer the Scrapie Eradication Program. Each agreement must specify the

roles of the state and federal government for the eradication program and the state Scrapie Flock Certification Program.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

CHAPTER 206

REGULATION FOR SCRAPIE ERADICATION

2VAC5-206-10. Definitions.

"Accredited veterinarian" means a veterinarian approved by the United States Department of Agriculture in accordance with 9 CFR 160.1 (2002).

"Animal" means any sheep or goat.

"Breeding [~~sheep and goats~~ goat] " means any sexually intact [~~sheep or~~] goat [of any age] that is not moving directly to slaughter [,] or through slaughter channels to slaughter.

"Consistent state" means a state listed in 9 CFR 79.1 that the USDA Administrator has determined in compliance with 9 CFR 79.6.

["~~Diagnosis" means a result of an official test indicating a positive result for scrapie.~~

"Exposed animal" means (i) any animal that has been in the same flock at the same time as a scrapie-positive female animal, excluding limited contacts; (ii) any animal born in a flock after a scrapie-positive animal was born into that flock or lambed in that flock, if born before that flock completes the requirements of a flock plan; (iii) any animal that was commingled with a scrapie-positive female animal during or up to 30 days after she lambed, kidded, or aborted, or while a visible vaginal discharge was present, or that was commingled with any other scrapie-positive female animal for 24 hours or more, including during activities such as shows and sales or while in marketing channels; or (iv) any animal in a noncompliant flock.]

"Exposed flock" means any flock in which a scrapie-positive [~~or suspect~~] animal was born or lambed [~~, or any flock into which a scrapie positive or scrapie suspect animal has been introduced~~]. [Any flock that currently contains a female high-risk, exposed, or suspect animal, or that once contained a female high-risk, exposed, or suspect animal that lambed in the flock and from which tissues were not submitted for official testing and found negative. A flock that has completed a postexposure management and monitoring plan following the exposure will no longer be an exposed flock.]

"Flock [~~or herd~~] " means all animals [, sheep, goats, or commingled sheep and goats,] maintained on a single premises and all animals under common ownership or

supervision on two or more premises with animal interchange between the premises. Changes in ownership of part or all of the flock do not change the identity of the flock or the regulatory requirements applicable to the flock.

["Flock of origin" means the flock in which an animal most recently resided in which it was either born, gave birth, or was used for breeding purposes. The determination of an animal's flock of origin may be based either on the physical presence of the animal in the flock, the presence of official identification on the animal traceable to the flock, the presence of other identification on the animal that is listed on the bill of sale, or other evidence, such as registry records. For all male animals it is the flock of birth.]

"Flock plan" means a written flock-management agreement signed by (i) the owner of a flock, (ii) the accredited veterinarian (if one is employed by the owner), (iii) an APHIS representative, [~~and~~ or] (iv) the State Veterinarian, in which each participant agrees to undertake actions specified in the flock plan to control the spread of scrapie from, and eradicate scrapie in, an infected flock or source flock or to reduce the risk of the occurrence of scrapie in a flock that contains a high-risk or an exposed animal. As part of a flock plan, the flock owner must provide the facilities and personnel needed to carry out the requirements of the flock plan. [The flock plan must include the requirements in 9 CFR 54.8.]

["High-risk animal" means a sexually intact animal, excluding male sheep that have tested RR at codon 171 and AA at codon 136 using an official genotype test, that has not been redesignated as part of a USDA-approved pilot project that is:

1. The progeny of a scrapie-positive dam;
2. Born in the same flock during the same lambing season as progeny of a scrapie-positive dam, unless the progeny of the scrapie-positive dam are from separate contemporary lambing groups;
3. Born in the same flock during the same lambing season that a scrapie-positive animal was born, or during any subsequent lambing season, if born before that flock completes the requirements of a flock plan; or
4. An exposed female sheep that has not tested QR, HR, or RR at codon 171 using an official genotype test.]

"Infected flock" means any flock in which a state or APHIS representative has determined that a scrapie-positive female animal has resided unless an epidemiologic investigation conducted by a State or APHIS representative shows that the animal did not lamb or abort in the flock. [A flock will no longer be considered an infected flock after it has completed the requirements of a flock plan.]

"Low-risk commercial goat" means a low-risk goat from a [~~herd~~] flock] in which animals are moved to slaughter only

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directly or through slaughter channels or any animal raised only for meat or fiber production and not registered with a sheep or goat registry or used for exhibition.

"Low-risk goat" means a goat that is not a scrapie-positive, suspect, high-risk, or exposed animal; that has not been commingled with sheep; and that is from a state in which (i) scrapie has not been identified in a goat during the previous 10 years; (ii) scrapie has been identified in a goat during the previous 10 years, but the scrapie-positive goat was not born in the state, resided in the state for less than 72 months, and did not kid while in the state; or (iii) scrapie has been identified in a goat during the previous 10 years and the scrapie-positive goat was commingled with sheep but records allowed a complete epidemiologic investigation to be completed and all resulting infected, source, and exposed goat [~~herds~~ flocks] had completed flock plans and were in compliance with post-exposure monitoring and management plans.

"Noncompliant flock" means (i) any source or infected flock whose owner declines to enter into a flock plan or postexposure management and monitoring plan (PEMMP) agreement within 60 days of being so designated or whose owner is not in compliance with either agreement; (ii) any exposed flock whose owner fails to make animals available for testing within 60 days of notification or as mutually agreed, or whose owner fails to submit required postmortem samples as directed in the PEMMP; (iii) any flock whose owner has misrepresented, or who employs a person who has misrepresented, the scrapie status of an animal or any other information on a certificate, permit, owner statement, or other official document within the last five years; or (iv) any flock whose owner or manager has moved, or who employs a person who has moved, an animal in violation of 9 CFR Part 79 within the last five years, as determined by the State Veterinarian [or APHIS].

"Official USDA identification" means identification approved by the USDA/APHIS/VS for [~~the identification of animals, which is so designed as to prevent alteration. This may include tattoo and electronic identification~~ use in the scrapie eradication program].

"Postexposure management and monitoring plan (PEMMP)" means a written agreement signed by the owner of a flock, any accredited veterinarian employed by the owner, and a state or APHIS representative in which each participant agrees to undertake actions specified in the agreement to reduce the risk of the occurrence of scrapie and to monitor for the occurrence of scrapie in the flock for at least five years after the last high-risk or scrapie-positive animal is removed from the flock or after the last exposure of the flock to a scrapie-positive animal unless the monitoring time is otherwise specified by a state or APHIS representative. As part of a postexposure management and monitoring plan, the flock owner must provide the facilities and personnel needed

to carry out the required elements listed in the plan. [This plan must include the requirements in 9 CFR 54.8.

"Premises identification number" (PIN) means a unique number used on official ear tags and tattoos to identify the premises of origin of an animal and that is recorded in the Scrapie National Generic Database. The first two digits are the Postal Service abbreviation for states followed by an alphanumeric number that does not include I, O, or Q, or is the national premises identification number or other PIN approved by the State Veterinarian and USDA/APHIS/VS.]

"Scrapie" means a nonfebrile, transmissible, insidious, degenerative disease that affects the central nervous system, and is a transmissible spongiform encephalopathy (TSE) found in sheep and goats.

"Scrapie Flock Certification Program" means a [voluntary] program, sponsored by the USDA/APHIS/VS, to reduce scrapie occurrence and spread; identify flocks that have been free of evidence of scrapie over a specified time period; and contribute to the eventual eradication of scrapie.

"Scrapie-positive" means an animal that has [~~been diagnosed~~ tested positive for scrapie] by USDA-accepted testing methods by the National Veterinary Services [~~Laboratory~~ Laboratories], or another laboratory designated by the State Veterinarian, to have the disease scrapie.

"Source flock" means a flock in which a state or APHIS representative has determined that at least one animal was born that [~~was diagnosed as~~ tested positive for] scrapie [~~positive~~] at an age of 72 months or less or in which a scrapie-positive animal has resided throughout its life.

"State Veterinarian" means the Virginia State Veterinarian or his representative employed by the Virginia Department of Agriculture and Consumer Services.

["Suspect animal" means an animal designated suspect that is: (i) a sheep or goat that exhibits any of the following clinical signs of scrapie and has been determined to be suspicious for scrapie by an accredited veterinarian or a state or APHIS representative: weight loss despite retention of appetite; behavioral abnormalities; pruritus (itching); wool pulling; biting at legs or side; lip smacking; motor abnormalities such as incoordination, high stepping gait of forelimbs, bunny-hop movement of rear legs, or swaying of back end; increased sensitivity to noise and sudden movement; tremor; star-gazing; head pressing; recumbency, or other signs of neurological disease; or chronic wasting; (ii) a sheep or goat that has tested positive for scrapie or for the protease-resistant protein associated with scrapie on an unofficial test or a screening test; or (iii) a sheep or goat whose official scrapie test yielded inconclusive or suggestive results (i.e., the NVSL report reads inconclusive or suggestive rather than not detected).]

"USDA and USDA/APHIS/VS" means the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services.

2VAC5-206-20 Identification of sheep and goats in commerce.

[~~Any sheep or goat~~ Each animal is required to be officially identified as to its flock of origin and for any animal] born after January 1, 2002, [~~shall be identified to the premises of birth, if not the same as the premises of origin~~ to its flock of birth if not the same as its flock of origin], prior to change of ownership or exhibition.

No person shall apply an official USDA tag or premises identification number or brand or official registry tattoo to an animal that did not originate on the premises to which the number has been officially assigned. No person may remove or tamper with any means of identification required to be on sheep or goats.

Any sheep or goat that is bartered, leased, traded, loaned, sold, exhibited, or otherwise moved from one management to another shall be deemed to have undergone a change of ownership for the purpose of this regulation. The buyer, seller, and any dealer or market operator shall keep a record of all changes of ownership for a minimum of five years. Any sheep or goat that loses its identification, that was applied at its [flock/herd flock] of origin for exhibition or change of ownership, shall be identified by the person in control or possession of the animal prior to its commingling with any other animals [; and if the flock of origin cannot be determined all possible flocks/herds of origin shall be listed on the record]. The buyer, seller, and any dealer or market operator shall be equally responsible for maintaining the required record, which shall be made available on request by [representatives of the Virginia Department of Agriculture and Consumer Services the State Veterinarian or his designee].

Any out-of-state sheep or goats that are offered for sale in an approved Virginia livestock market that have not previously been identified must be (i) identified with an official USDA tag on arrival and prior to commingling with any other sheep or goats with all information recorded as required for change of ownership or meet the importation requirements; or (ii) returned to the state of origin.

Animals required to be officially identified include:

1. All [breeding] sheep [and goats that are not in slaughter channels except low-risk commercial goats].
2. All sexually intact animals for exhibition. [~~This includes (i) sexually intact registered goats and goats used primarily for milk production, (ii) goats that are being moved from one location to another even if there is no change of ownership, and (iii) goats that are being sold for breeding or exhibition. It also includes sexually intact~~

~~goats that have resided on the same premises as sheep and goats that have been exposed to animals that are affected with scrapie.]~~

3. All sheep over 18 months of age [, including wethers, and those in slaughter channels unless moving as a group described below].

4. All exposed and high-risk animals including all low-risk exposed animals, genetically susceptible exposed animals, genetically less susceptible exposed animals, and genetically resistant exposed sheep.

5. All suspect and test-positive animals.

6 Animals from noncompliant flocks.

[7. Breeding goats, except low-risk commercial goats.

8. All scrapie positive, suspect, high-risk, or animals of any age and of any sexually intact exposed animal of more than one year of age or, any sexually intact exposed animal of less than one year of age upon change of ownership (except for exposed animals moving in slaughter channels at less than one year of age).]

Animals not required to be [individually officially] identified include:

1. Slaughter sheep (sheep in slaughter channels) under 18 months (Note: If a sexually intact sheep is sold at an unrestricted sale (any sale that is not a slaughter or feeding for slaughter sale), it must be identified.).

2. Slaughter goats (goats in slaughter channels).

3. Low-risk commercial goats.

4. Castrated goats that [have are] not [been suspect, high risk,] exposed to scrapie [, or test positive].

5. Animals shipped directly to an approved slaughter facility [if the animals were kept as a group on the same premises on which they were born or used for breeding purposes and were not commingled with animals from another premises at any time, including throughout the feeding, marketing, and slaughter process. The shipment must be accompanied by an owner statement that includes the owner's name, signature, address, and phone number, date the animals left the flock of origin, the premises identification number assigned to the premises, the number of animals, the premises portion of the premises identification if premises identification is used, and a statement that the animals were either born or were used for breeding purposes on the premises to which the premises identification is assigned].

[6. Wethers for exhibition and wethers under 18 months of age.

7. Animals moved for grazing or similar management reasons whenever the animals are moved from a premises

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owned or leased by the owner of the animals to another premise owned or leased by the owner of the animals.]

Registered [~~goat owners that have sheep and goats identified with~~] official tattoos [~~registered with USDA in the Scrapie National Genetic Data Base~~] and carry the registration papers [in the name of the current owner] with them to a registered [~~sheep or~~] goat sale [~~or exhibition or that transfer the registration by private treaty~~] would not be required to apply tags for exhibition or sale [~~at~~ of] a registered [~~goat sale animal~~. The purchaser at such sale must carry the registration papers and a completed application for registration in the name of the new owner when leaving the sale. Alternatively, legible official tattoo numbers assigned to the flock in the National Scrapie Database may be used in conjunction with an individual number unique within the flock].

Any goat or sheep undergoing a change of ownership (including exhibition and/or importation into the state) not having an official identification shall be quarantined until the requirements of this regulation are met.

In order to simplify identification requirements, livestock markets or sale/show managers may require that all animals be identified with official USDA tags.

2VAC5-206-30. Importation of sheep and goats into Virginia.

No sheep or goat may be imported into Virginia that does not originate from a consistent state, unless originating from a [flock enrolled in the] complete monitored [~~scrapie flock or enrolled in~~ or export monitored category of] the USDA Scrapie Flock Certification Program (SFCP). All sheep or goats imported into the [state Commonwealth] of Virginia must be identified by official USDA tag, legible official [~~goat~~] registry tattoo if accompanied by a registration certificate, or other approved device that contains a premises identification issued by the state of origin in combination with a unique animal number. No sheep or goat that is infected with scrapie, [~~and no offspring of sheep or goat infected with scrapie~~, is showing clinical signs of scrapie, or that is a high-risk animal] may be moved into Virginia [except by permit when authorized by the State Veterinarian for destruction, research or in the case of high-risk animals immediate slaughter].

Except as stated below, all sheep and goats imported into Virginia must be accompanied by a Certificate of Veterinary Inspection (CVI).

No CVI is required for animals going directly to slaughter [or to a terminal (feedlot)].

Animals entering Virginia from a state contiguous with Virginia without change in ownership or management and as a part of normal operating procedures may do so without a CVI.

The CVI for all sheep or goats imported into Virginia shall contain [official USDA] identification numbers for each animal. [~~Acceptable identification includes official USDA ear tags that include the premises identification and a unique animal identification number, legible official goat registration tattoo if accompanied by a registration certificate or any form of identification approved by APHIS for use in the scrapie eradication program. Electronic identification may also be used.~~]

2VAC5-206-40. Exhibition of sheep and goats.

[~~Sheep and goats entering Virginia for exhibition shall meet all requirements for entry into Virginia.~~ No sheep or goat may be imported into Virginia that does not originate from a consistent state, unless enrolled in the USDA Scrapie Flock Certification Program (SFCP). All sheep or goats imported into the Commonwealth of Virginia must be officially identified except for those exempted in this regulation. No test-positive, high-risk, suspect, or exposed animal or any offspring of such an animal may be moved into Virginia.]

2VAC5-206-50. Scrapie management.

All known cases of scrapie and any sheep or goat known to originate from a scrapie-infected [or source] flock or to have had contact with scrapie-infected animals [, unless determined not to be a high-risk animal and released for movement by the state of origin,] or any sheep or goat showing clinical signs of scrapie not known to be caused by some other disease or injury shall be isolated from all other nonaffected animals and reported [by an accredited veterinarian] to the State Veterinarian within 24 hours of the isolation.

Upon notification of known cases of scrapie and all suspected cases of scrapie, [or that a flock received a high-risk animal, was the flock of birth of a positive animal, or was the flock in which a scrapie positive female animal resided,] the [~~flock/herd~~ flock] shall be quarantined, investigated, all animals in the [~~flock/herd~~ flock] individually identified, and a risk analysis conducted. A diagnostic plan shall be developed and reviewed by the State Veterinarian utilizing approved live diagnostic tests and submission of appropriate samples to an approved laboratory for scrapie testing upon the death or destruction of any animals in a [~~flock/herd~~ flock] quarantined for scrapie. All [~~flocks/herds~~ flocks] shall remain under quarantine until a determination of the status of the [~~flock/herd~~ flock] is made. [Animals that are not needed for testing to determine the status of the flock and that are not high-risk, suspect, or positive animals may be released based on a risk assessment or as provided in a flock plan.] All [~~flocks/herds~~ flocks] under quarantine shall be examined at least yearly, or more frequently as determined by the State Veterinarian, and an inventory of all animals in the [~~flock/herd~~ flock] recorded with all deaths, sales to slaughter, [as allowed by the State Veterinarian] and destruction accounted for. Upon confirmation of the existence

of scrapie in a [~~flock/herd~~ flock], a thorough epidemiological report of all source flocks [~~and herds~~] and contacts with other animals shall be documented and a risk analysis conducted. Subsequently [~~all~~ flocks that are identified as] source [or as infected] flocks [~~or herds~~] and [~~contacts of all confirmed or high risk scrapie flock/herd~~ all flocks that received high-risk animals] shall be quarantined, investigated, all animals in [flock/herd flock] individually identified, and [~~a risk analysis conducted~~ testing conducted if needed to determine the status of the flock. Trace information for scrapie positive and high-risk animals to flocks outside Virginia will be reported to the affected state as well as APHIS].

[~~Scrapie positive or animals suspected of having scrapie~~ Test positive or suspect animals] shall be moved only with the approval of the State Veterinarian, for transportation to a USDA-approved research facility or for the purpose of destruction.

All known scrapie-infected and source [~~flocks/herds~~ flocks and high-risk animals] shall be quarantined with movements of animals only (i) to slaughter, (ii) to feedlots under permit and quarantine for later movement to slaughter, (iii) for destruction, or (iv) to a USDA-approved research facility. Animals destroyed as a result of this section will be disposed of in a manner approved by the State Veterinarian.

Infected and source flocks may be released from quarantine after completion of a USDA [flock/herd flock] plan or in [~~an~~ a] USDA-approved pilot project [flock/herd flock] plan that includes the owners agreement to comply with a five-year postexposure monitoring and management plan. The State Veterinarian may release any suspected case of scrapie from quarantine when other causes of the symptoms are confirmed and scrapie has not been diagnosed.

Any [flock/herd flock] under quarantine that has not had a [test positive] confirmation [~~of~~ for] scrapie diagnosis within five years that has followed the [flock/herd USDA-approved flock] plan shall be released from quarantine. The State Veterinarian may release any [flock/herd flock] from quarantine based on epidemiological or diagnostic factors.

VA.R. Doc. No. R03-237; Filed July 30, 2008, 9:48 a.m.



TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Proposed Regulation

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

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

Public Hearing Information:

October 6, 2008 - 11 a.m. - Alcoholic Beverage Control Board, 2901 Hermitage Avenue, Richmond, VA

Public Comments: Public comments may be submitted until October 17, 2008.

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

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

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

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

The goals of this regulation are:

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

Substance: 3VAC5-50-40 would be revised to provide a process for licensees to apply for approval for the employment of individuals whose records of criminal or alcoholic beverage violations might subject the licensee to disciplinary action pursuant to §4.1-225 I of the Code of Virginia. In 3VAC5-50-50, a provision would be added allowing persons 18 years of age or older to sell or serve wine for on-premises consumption at a counter in an establishment selling wine only. 3VAC5-50-80 would be amended to create an exception to the prohibition against placing alcoholic beverages in containers of ice available to consumers for off-premises consumption for farm winery licensees operating a remote retail location at a wine festival. In 3VAC5-50-100, the provision in subdivision A 4 requiring grocery stores and convenience grocery stores to have at least five items from each of the basic food groups would be repealed. In 3VAC5-50-130 C, the rules for nonmember use of club premises

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would be simplified to allow licensed clubs to admit nonmembers to the licensed club area for events at which alcohol is served up to 24 times each year. Limits on use of the unlicensed portion of club premises would be repealed. 3VAC5-50-140 would be revised to clarify that its provisions do not apply to legitimate theatrical or art exhibits or performances, and current provisions requiring partially nude performers to remain reasonably separate from patrons would be replaced with a required separation of three feet. These amendments will protect the health, safety, or welfare of citizens by allowing alcoholic beverage retailers fewer restrictions on the operation of their businesses, while continuing to discourage overconsumption. The amendments to 3VAC5-50-140 will help to protect citizens from the negative secondary effects of sexually oriented businesses.

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

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

Summary of the Proposed Regulation. The Alcoholic Beverage Control Board (ABC) proposes to make several amendments to its retail operations regulation. ABC proposes to:

- Specify a process by which board licensees may request approval for hiring individuals with criminal records.
- Allow individuals between the ages of 18 and 21 to sell or serve both wine and beer at establishments that only sell the beverage being served.
- Allow wineries to serve wine that has been placed in containers of ice at a location remote from the winery (specifically at wine festivals).
- Eliminate specific requirements on the types of foods that convenience and grocery stores must stock in order to be licensed by the board to sell beer and wine.
- Simplify and loosen restrictions on the number of times per year that clubs licensed by ABC may hold public events where alcohol will be served.
- Specify how far apart adult entertainers must be from their audience in order to comply with this regulation and add an exemption to this regulation's nudity provisions for legitimate theatrical productions.

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

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

This regulatory change will benefit licensee employers in that they will no longer have to choose between not hiring the employees they would prefer to hire and hiring those employees knowing that their license might be at risk. These employers may also see employment costs decrease by a small amount if this change widens the pool of individuals from which they may hire. Individuals who have criminal histories and want to work for businesses licensed by ABC will benefit because they likely stand a greater chance of being hired after promulgation of procedures that will protect licensee employers from possible repercussions of their hiring decisions. ABC will likely incur extra costs associated with the application and approval process being promulgated.

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

Current regulation requires that convenience and grocery stores that sell wine and beer to stock at least five items from each food group that may be used to prepare meals. ABC proposes to simplify this requirement by eliminating

regulatory reference to food groups and specific numbers of foods. So the proposed regulation will require these establishment generally stock food items that can be used to prepare meals but allows greater latitude for licensees to decide what items to stock. This change will likely benefit licensees in that they will be able to stock what their customers demand without having to also meet ABC requirements.

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

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

Businesses and Entities Affected. These proposed regulatory changes will generally affect all of the approximately 12,500 establishments that are licensed by ABC and will particularly affect wineries in the Commonwealth.

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

Projected Impact on Employment. These proposed regulatory changes may affect who is employed for various jobs at

licensed establishments; for instance, more individuals between the ages of 18 and 21 may be hired to work in winery tasting rooms. There will likely be no measurable change in total employment in the Commonwealth, however, on account of this proposed regulation.

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

Small Businesses: Costs and Other Effects. ABC estimates that at least 95% of their approximately 12,500 licensees are small businesses. These businesses are unlikely to incur any new costs on account of the proposed regulation.

Small Businesses: Alternative Method that Minimizes Adverse Impact. ABC estimates that at least 95% of their approximately 12,500 licensees are small businesses. These businesses are unlikely to incur any new costs on account of the proposed regulation.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, §2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB’s best estimate of these economic impacts.

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

Summary:

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

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

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

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

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

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

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

D. Notwithstanding the provisions of §4.1-225 (1) (i) of the Code of Virginia, the board will not take action to suspend or revoke a license if a licensee knowingly employs a person who has been convicted in any court of a felony or of any crime or offense involving moral turpitude, except in the following two categories:

1. The board may suspend or revoke a license if a licensee knowingly employs in the business conducted under such license, as agent, servant, or employee, in a position that is involved in the selling or serving of alcoholic beverages to customers, any person who has been convicted of a felony violation of Articles 1 (§18.2-248 et seq.), 1.1 (§18.2-265.1 et seq.), or 2 (§18.2-266 et seq.) of Chapter 7 of Title 18.2 or a similar offense under the laws of any state, or the United States; or

2. The board may suspend or revoke a license if a licensee knowingly employs in the business conducted under such license, as agent, servant, or employee, in a position that is involved in the creation or maintenance of records required to be kept by the licensee under the provisions of Title 4.1 of the Code of Virginia or board regulations, or in the preparation or filing of any tax return or report required under Title 4.1 or Title 58.1 of the Code of Virginia or board regulations, any person who has been convicted of a felony violation of Articles 2 (§18.2-89 et seq.), 3 (§18.2-97.1 et seq.), 4 (§18.2-112.1 et seq.), or 7.1 (§18.2-152.2 et seq.) of Chapter 5 of Title 18.2 or Articles 1 (§18.2-172.2 et seq.), 3 (§18.2-178 et seq.), 4 (§18.2-182 et seq.), 5 (§18.2-186 et seq.), 6 (§18.2-194 et seq.), or 9 (§18.2-246.1 et seq.) of Chapter 6 of Title 18.2 or a similar offense under the laws of any state, or the United States.

E. If a licensee wishes to employ a person whose employment would be covered by subdivisions D 1 or 2 of this section, or who has violated the laws of the Commonwealth, of any other state, or of the United States, applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages, the licensee may apply to the board for approval of such employment. The board will cause the Bureau of Law Enforcement Operations to conduct an investigation into the suitability of the person for employment and recommend approval or disapproval. Before disapproving the employment of a person, the board shall accord him the same notice, opportunity to be heard, and follow the same administrative procedures accorded a licensee cited for a violation of Title 4.1 of the Code of Virginia.

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

No person licensed to sell alcoholic beverages at retail shall permit any employee under the age of 18 years to sell, serve or dispense in any manner any alcoholic beverage in his licensed establishment for on-premises consumption, nor shall such person permit any employee under the age of 21 years to prepare or mix alcoholic beverages in the capacity of a bartender. "Bartender" is defined as a person who sells,

serves or dispenses alcoholic beverages for on-premises consumption at a counter, as defined in 3VAC5-50-110, and does not include a person employed to serve food and drink to patrons at tables as defined in that section. However, a person who is 18 years of age or older may sell or serve beer for on-premises consumption at a counter in an establishment that sells beer only, or may sell or serve wine for on-premises consumption in an establishment that sells wine only.

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

No retail licensee shall entreat, urge or entice any patron of his establishment to purchase any alcoholic beverage; nor shall such licensee allow any other person to so entreat, urge or entice a patron upon his licensed premises. Entreating, urging or enticing shall include, but not be limited to, placing alcoholic beverages in containers of ice which are visible, located in public display areas and available to patrons of retail establishments for off-premises sales, except for farm winery licensees operating at a remote location in connection with a wine festival. Knowledge by a manager of the licensee of a violation of this section shall be imputed to the licensee.

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

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

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

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

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

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

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

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

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

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

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

In regard to both grocery stores and convenience grocery stores, "edible items" shall mean such items normally used in the preparation of meals, including liquids, ~~and which shall include a variety (at least five) of representative items from each of the basic food groups: dairy, meat, grain, vegetables and fruit.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~E. D.~~ Persons who are resident members of other clubs located at least 100 miles from the club licensed by the board (the "host club") and who are accorded privileges in the host club by reason of bona fide, prearranged reciprocal arrangements between the host club and such clubs shall be considered guests of the host club and deemed to have

members' privileges with respect to the use of its facilities. The reciprocal arrangements shall be set out in a written agreement and approved by the board prior to the exercise of the privileges thereunder.

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

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

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

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

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

1. The real or simulated display of any portion of the genitals, pubic hair or buttocks, or any portion of the breast below the top of the areola, by any employee, or by any other person; except that when entertainers are on a platform or stage and reasonably separated from the patrons of the establishment, they shall be in conformity with subdivision 2;
2. The real or simulated display of any portion of the genitals, pubic hair or anus by an entertainer, or any portion of the areola of the breast of a female entertainer. When not on a platform or stage and reasonably separate from the patrons of the establishment, entertainers shall be in conformity with subdivision 1;
3. Any real or simulated act of sexual intercourse, sodomy, masturbation, flagellation or any other sexual act prohibited by law, by any person, whether an entertainer or not; or

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

As used in this section, the term "reasonably separated" shall mean that no portion of the body of an entertainer may come in contact with any portion of the body of a patron.

B. No mixed beverage licensee shall permit any person to enter or remain on the premises with less than a fully-opaque covering of the genitals, pubic hair or buttocks, or any portion of the breast below the top of the areola.

C. The provisions of this section shall not apply to persons operating theaters, concert halls, art centers, museums, or similar establishments that are primarily devoted to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific or political value.

VA.R. Doc. No. R07-625; Filed July 30, 2008, 10:54 a.m.

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TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The following regulation filed by the Marine Resources Commission is exempt from the Administrative Process Act in accordance with §2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-910. Pertaining to Scup (Porgy) (amending 4VAC20-910-45).**

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

Effective Date: August 1, 2008.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendment lowers the commercial possession limit for scup from 7,862 pounds to 2,887 pounds from May 1 through October 31 of each year.

4VAC20-910-45. Possession limits and harvest quotas.

A. During the period January 1 through April 30 of each year, it shall be unlawful for any person to do any of the following:

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1. Possess aboard any vessel in Virginia more than 30,000 pounds of scup.

2. Land in Virginia more than a total of 30,000 pounds of scup during each consecutive 14-day landing period, with the first 14-day period beginning on January 2.

B. When it is projected and announced that 80% of the coastwide quota for this period has been attained, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than a total of 1,000 pounds of scup.

C. During the period November 1 through December 31 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than 3,500 pounds of scup.

D. During the period May 1 through October 31 of each year, the commercial harvest and landing of scup in Virginia shall be limited to ~~7,862~~ 2,887 pounds.

E. For each of the time periods set forth in this section, the Marine Resources Commission will give timely notice to the industry of calculated poundage possession limits and quotas and any adjustments thereto. It shall be unlawful for any person to possess or to land any scup for commercial purposes after any winter period coastwide quota or summer period Virginia quota has been attained and announced as such.

F. It shall be unlawful for any buyer of seafood to receive any scup after any commercial harvest or landing quota has been attained and announced as such.

G. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig or other recreational gear to possess more than 50 scup. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by 50. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any scup taken after the possession limit has been reached shall be returned to the water immediately.

VA.R. Doc. No. R08-1386; Filed July 25, 2008, 10:11 a.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulation filed by the Marine Resources Commission is exempt from the Administrative Process Act in accordance with §2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: 4VAC20-1150. Pertaining to Charter Boat and Head Boat Fisheries (adding 4VAC20-1150-10, 4VAC20-1150-20).

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

Effective Date: August 1, 2008.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The regulation sets a control date of June 24, 2008, that may be used to determine future limits on access to the charter boat and head boat fisheries.

CHAPTER 1150 PERTAINING TO CHARTER BOAT AND HEAD BOAT FISHERIES

4VAC20-1150-10. Purpose.

The purpose of this chapter is to establish a control date of June 24, 2008, that may be used to determine future eligibility requirements or limits on access to the charter boat and head boat fisheries.

4VAC20-1150-20. Control date.

The commission hereby establishes June 24, 2008, as the control date for management of access or eligibility requirements for the charter boat and head boat fisheries in Virginia. Participation by any individual in a charter boat or head boat fishery after the control date shall not be considered in the inclusion or distribution of any charter boat or head boat fishing opportunities or licensing opportunities should further entry limitations be established. Any individual entering the charter boat or head boat fishery after the control date shall be ineligible for future participation in the charter boat and head boat fishery should further entry limitations be established.

VA.R. Doc. No. R08-1521; Filed July 25, 2008, 10:10 a.m.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Final Regulation

Title of Regulation: 4VAC50-20. Impounding Structure Regulations (amending 4VAC50-20-20 through 4VAC50-20-90, 4VAC50-20-150 through 4VAC50-20-240, 4VAC50-20-260 through 4VAC50-20-320; adding 4VAC50-20-51, 4VAC50-20-52, 4VAC50-20-54, 4VAC50-20-58, 4VAC50-20-59, 4VAC50-20-105, 4VAC50-20-125, 4VAC50-20-155, 4VAC50-20-165, 4VAC50-20-175, 4VAC50-20-177, 4VAC50-20-330, 4VAC50-20-340, 4VAC50-20-350, 4VAC50-20-360, 4VAC50-20-370, 4VAC50-20-380, 4VAC50-20-390, 4VAC50-20-400; repealing 4VAC50-20-100 through 4VAC50-20-140, 4VAC50-20-250).

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

Effective Date: September 26, 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 amends the Virginia Soil and Water Conservation Board's Impounding Structure Regulations to protect the safety and welfare of the public and their property from the impact of dam failures. The key elements of this regulation will:

1. *Revise the dam hazard potential classification system from four categories (Class I, II, III, and IV) to three hazard classifications (High, Significant, and Low);*
2. *Specify that spillway design requirements are applicable to all state regulated dams regardless of the date they were built;*
3. *Modify the spillway design requirements to enhance public safety and reduce subjectivity (The final regulations further refined and simplified the requirements of Table 1 as well as created "special criteria" for certain low hazard impounding structures, resulting in a 57% reduction in estimated potential spillway upgrade costs for regulated dams from the proposed regulations to the final regulations);*
4. *Allow for the reduction of the spillway design flood requirements through incremental damage assessments for all qualifying dams;*
5. *Establish dam break inundation zone mapping requirements to identify areas that are subject to flooding during a dam failure;*
6. *Expand emergency action plan requirements for High and Significant Hazard Potential dams and emergency preparedness plan requirements for Low Hazard Potential dams;*
7. *Establish permit application fees for the administration of the Dam Safety Program;*
8. *Incorporate reporting standards into the regulations;*
9. *Reorganize, clarify, and expand sections related to permitting procedures; and*
10. *Update sections related to inspections, enforcement, and unsafe conditions.*

Changes from the proposed include simplification of spillway design flood requirements (Table 1) to remove size classes and in certain cases reduce spillway design standards, inclusion of exemptions for low hazard impounding structures meeting specified criteria, and the

reduction or elimination of fees associated with both Regular and Conditional Operation and Maintenance Certificates and Incremental Damage Assessment review.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

4VAC50-20-20. General provisions.

A. This chapter provides for the proper and safe design, construction, operation and maintenance of impounding structures to protect public safety. This chapter shall not be construed or interpreted to relieve the owner or operator of any impoundment or impounding structure of any legal duties, obligations or liabilities incident to ownership, design, construction, operation or maintenance.

B. Approval by the board of proposals for an impounding structure shall in no manner be construed or interpreted as approval to capture or store waters. For information concerning approval to capture or store waters, see Chapter 8 (§62.1-107) of Title 62.1 of the Code of Virginia, and other provisions of law as may be applicable.

C. In promulgating this chapter, the board recognizes that no impounding structure can ever be completely "fail-safe," because of incomplete understanding of or uncertainties associated with natural (earthquakes and floods) and manmade (sabotage) destructive forces; with material behavior and response to those forces; and with quality control during construction.

D. ~~Any~~ All engineering ~~analysis~~ analyses required by this chapter ~~such as, including but not limited to,~~ plans, specifications, hydrology, hydraulics and inspections shall be conducted or overseen by and bear the seal of a professional engineer licensed to practice in Virginia.

E. Design, inspection and maintenance of impounding structures shall be conducted utilizing competent, experienced, engineering judgment that takes into consideration factors including but not limited to local topography and meteorological conditions.

~~E. F.~~ The official forms as [called for] by [noted] in this chapter are available from the ~~director~~ department at the department's website.

4VAC50-20-30. Definitions.

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

"Acre-foot" means a unit of volume equal to 43,560 cubic feet or 325,853 gallons ~~(one~~ (equivalent to one foot of depth over one acre of area).

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"Agricultural purpose" means the production of an agricultural commodity as defined in §3.1-249.27 of the Code of Virginia that requires the use of impounded waters.

"Agricultural purpose dams" means [dams impounding structures] which are less than 25 feet in height or which create a maximum impoundment smaller than 100 acre-feet, and certified by the owner on official forms as constructed, maintained or operated primarily for agricultural purposes.

"Alteration" means changes to an impounding structure that could alter or affect its structural integrity. Alterations include, but are not limited to, changing the height or otherwise enlarging the dam, increasing normal pool or principal spillway elevation or physical dimensions, changing the elevation or physical dimensions of the emergency spillway, conducting necessary structural repairs or structural maintenance, or removing the impounding structure. [Structural maintenance does not include routine maintenance.]

"Alteration permit" means a permit required for changes any alteration to an impounding structure that could alter or affect its structural integrity. Alterations requiring a permit include, but are not limited to: changing the height, increasing the normal pool or principal spillway elevation, changing the elevation or physical dimensions of the emergency spillway or removing the impounding structure.

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

"Conditional operation and maintenance certificate Operation and Maintenance Certificate" means a certificate required for impounding structures with deficiencies.

"Construction" means the construction of a new impounding structure.

"Construction permit" means a permit required for the construction of a new impounding structure.

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

"Department" means the Virginia Department of Conservation and Recreation.

"Design flood" means the calculated volume of runoff and the resulting peak discharge utilized in the evaluation, design, construction, operation and maintenance of the impounding structure.

"Design freeboard" means the vertical distance between the maximum elevation of the design flood and the top of the impounding structure.

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

"Drill" means a type of emergency action plan exercise that tests, develops, or maintains skills in an emergency response procedure. During a drill, participants perform an in-house exercise to verify telephone numbers and other means of communication along with the owner's response. A drill is considered a necessary part of ongoing training.

"Emergency Action Plan or EAP" means a formal document that recognizes potential impounding structure emergency conditions and specifies preplanned actions to be followed to minimize loss of life and property damage. The EAP specifies actions the owner must take to minimize or alleviate emergency conditions at the impounding structure. It contains procedures and information to assist the owner in issuing early warning and notification messages to responsible emergency management authorities. It shall also contain dam break inundation zone maps as required to show emergency management authorities the critical areas for action in case of emergency.

"Emergency Action Plan Exercise" means an activity designed to promote emergency preparedness; test or evaluate EAPs, procedures, or facilities; train personnel in emergency management duties; and demonstrate operational capability. In response to a simulated event, exercises should consist of the performance of duties, tasks, or operations very similar to the way they would be performed in a real emergency. An exercise may include but not be limited to drills and tabletop exercises.

"Emergency Preparedness Plan" means a formal document prepared for Low Hazard [dams impounding structures] that provides maps and procedures for notifying owners of downstream property that may be impacted by an emergency situation at an impounding structure.

"Freeboard" means the vertical distance between the maximum water surface elevation associated with the spillway design flood and the top of the impounding structure.

"Height" means the structural hydraulic height of an impounding structure. If the impounding structure spans a stream or watercourse, height means the vertical distance from the natural bed of the stream or watercourse measured at the downstream toe of the impounding structure to the top of the impounding structure. If the impounding structure does not span a stream or watercourse, height means the vertical distance from the lowest elevation of the outside downstream limit of the barrier to the top of the impounding structure.

"Impounding structure" [or "dam"] means a man-made device structure, whether a dam across a watercourse or other structure outside a watercourse, used or to be used to retain or store waters or other materials. The term includes: (i) all dams that are 25 feet or greater in height and that create an impoundment capacity of 15 acre-feet or greater, and (ii) all dams that are six feet or greater in height and that create an

impoundment capacity of 50 acre-feet or greater. The term "impounding structure" shall not include: (a) dams licensed by the State Corporation Commission that are subject to a safety inspection program; (b) dams owned or licensed by the United States government; (c) dams ~~constructed, maintained or~~ operated primarily for agricultural purposes which are less than 25 feet in height or which create a maximum impoundment capacity smaller than 100 acre-feet; (d) water or silt retaining dams approved pursuant to §45.1-222 or §45.1-225.1 of the Code of Virginia; or (e) obstructions in a canal used to raise or lower water.

"Impoundment" means a body of water or other materials the storage of which is caused by any impounding structure.

~~"Inundation zone" means an area that could be inundated as a result of impounding structure failure and that would not otherwise be inundated to that elevation.~~

"Life of the impounding structure" and "life of the project" mean that period of time for which the impounding structure is designed and planned to perform effectively, including the time required to remove the structure when it is no longer capable of functioning as planned and designed.

"Maximum impounding capacity" means the volume of water or other materials in acre-feet that is capable of being impounded at the top of the impounding structure.

~~["Normal impounding capacity" means the volume of water or other materials in acre feet that is capable of being impounded at the elevation of the crest of the lowest ungated outlet from the impoundment.~~

"Normal or typical water surface elevation" means the water surface elevation at the crest of the lowest ungated outlet from the impoundment or the elevation of the normal pool of the impoundment if different than the water surface elevation at the crest of the lowest ungated outlet. For calculating sunny day failures for flood control impounding structures, stormwater detention impounding structures, and related facilities designed to hold back volumes of water for slow release, the normal or typical water surface elevation shall be measured at the crest of the auxiliary or emergency spillway.]

"Operation and ~~maintenance—certificate~~ Maintenance Certificate" means a certificate required for the operation and maintenance of all impounding structures.

"Owner" means the owner of the land on which an impounding structure is situated, the holder of an easement permitting the construction of an impounding structure and any person or entity agreeing to maintain an impounding structure. The term "owner" ~~includes~~ may include the Commonwealth or any of its political subdivisions, including but not limited to sanitation district commissions and authorities. ~~Also included are~~ any public or private institutions, corporations, associations, firms or companies

organized or existing under the laws of this Commonwealth or any other state or country, as well as any person or group of persons acting individually or as a group.

["Planned land use" means land use that has been approved by a locality or included in a master land use plan by a locality, such as in a locality's comprehensive land use plan.]

"Spillway" means a structure to provide for the controlled release of flows from the impounding structure into a downstream area.

"Stage I Condition" means a flood watch or heavy continuous rain or excessive flow of water from ice or snow melt.

"Stage II Condition" means a flood watch or emergency spillway activation or [dam impounding structure] overtopping where a [breach failure] may be possible.

"Stage III Condition" means an emergency spillway activation or [dam impounding structure] overtopping where imminent failure is probable.

"Sunny day dam failure" means the [breaching failure] of an impounding structure with the initial water level at the normal reservoir level, usually at the lowest ungated principal spillway elevation or the typical operating water level.

"Tabletop Exercise" means a type of emergency action plan exercise that involves a meeting of the impounding structure owner and the state and local emergency management officials in a conference room environment. The format is usually informal with minimum stress involved. The exercise begins with the description of a simulated event and proceeds with discussions by the participants to evaluate the EAP and response procedures and to resolve concerns regarding coordination and responsibilities.

"Top of the impounding structure" means the lowest point of the nonoverflow section of the impounding structure.

"Watercourse" means a natural channel having a well-defined bed and banks and in which water normally flows when it normally does flow.

4VAC50-20-40. Classes Hazard potential classifications of impounding structures.

A. Impounding structures shall be classified in one of ~~four~~ three hazard categories according to size and hazard potential; three hazard classifications as defined in subsection B of this section and Table 1. ~~Size classification shall be determined either by maximum impounding capacity or height, whichever gives the larger size classification.~~

B. For the purpose of this chapter, hazards pertain to potential loss of human life or ~~property~~ property of others downstream from the impounding structure in event of failure or faulty operation of the impounding structure or appurtenant facilities. Hazard potential

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classifications of [~~dams impounding structures~~] are as follows:

1. ~~Impounding structures in the Class I hazard potential category are located where High Hazard Potential is defined where an impounding structure failure will cause probable loss of life or serious economic damage to occupied~~. ["Probable loss of life" means that impacts will occur that are likely to cause a loss of human life, including but not limited to impacts to residences, businesses, other occupied structures, or major roadways.] ~~Economic damage may occur to, but not be limited to, building(s), industrial or commercial facilities, important~~ [~~primary~~] public utilities, ~~main highway(s) or railroad(s) major~~ [~~public~~] roadways, railroads, personal property, and agricultural interests. ["Major roadways" include, but are not limited to, interstates, primary highways, high-volume urban streets, or other high-volume roadways.]

2. ~~Impounding structures in the Class II hazard potential category are located where Significant Hazard Potential is defined where an impounding structure failure could may cause possible the loss of life or appreciable economic damage.~~ ["May cause loss of life" means that impacts will occur that could cause a loss of human life, including but not limited to impacts to facilities that are frequently utilized by humans other than residences, businesses, or other occupied structures, or to secondary roadways.] ~~Economic damage may occur to, but not be limited to occupied, building(s), industrial or commercial facilities,~~ [~~secondary~~] public utilities, ~~secondary highway(s) or railroad(s) or cause interruption of use or service of relatively important public utilities~~ [~~public~~] roadways, railroads, personal property, and agricultural interests. ["Secondary roadways" include, but are not limited to, secondary highways, low-volume urban streets, service roads, or other low-volume roadways.]

3. ~~Impounding structures in Class III hazard potential category are located where Low Hazard Potential is defined where an impounding structure failure may cause minimal property damage to others. No loss of life is expected would result in no expected loss of life and would cause no more than minimal economic damage.~~ [~~Economic damage may occur to, but not be limited to, building(s), industrial or commercial facilities, secondary public utilities, secondary public roadways, railroads, personal property and agricultural interests.~~ "No expected loss of life" means no loss of human life is anticipated.]

4. ~~Impounding structures in Class IV hazard potential category are located where the failure of the impounding structure would cause no property damage to others. No loss of life is expected.~~

5. ~~Such size and~~ C. The hazard potential classifications classification [~~and size category for the given hazard classification~~] shall be proposed by the owner and shall be

subject to approval by the ~~director~~ board. To support the appropriate hazard classification, dam break analysis shall be conducted by the owner's engineer. Present and ~~projected development of planned land-use~~ [for which a development plan has been officially approved by the locality] in the dam break inundation zones downstream from the impounding structure shall be considered in determining the classification.

6. D. Impounding structures shall be subject to reclassification by the board as necessary.

4VAC50-20-50. Performance standards required for impounding structures.

A. In accordance with the definitions provided by §10.1-604 of the Code of Virginia and 4VAC50-20-30, an impounding structure shall be regulated if the [~~dam~~ impounding structure] is 25 feet or greater in height and creates a maximum impounding capacity of 15 acre-feet or greater, or the [~~dam~~ impounding structure] is six feet or greater in height and creates a maximum impounding capacity of 50 acre-feet or greater and is not otherwise exempt from regulation by the Code of Virginia. Impounding structures exempted from this chapter are those that are:

1. Licensed by the State Corporation Commission that are subject to a safety inspection program;
2. Owned or licensed by the United States government;
3. Operated primarily for agricultural purposes that are less than 25 feet in height or that create a maximum impoundment capacity smaller than 100 acre-feet;
4. Water or silt-retaining dams approved pursuant to §45.1-222 or 45.1-225.1 of the Code of Virginia; or
5. Obstructions in a canal used to raise or lower water.

Impounding structures of regulated size and not exempted shall be constructed, operated and maintained such that they perform in accordance with their design and purpose throughout the life of the project. For new impounding structures, the spillway(s) capacity shall perform at a minimum to safely pass the appropriate spillway design flood as determined in Table 1. For the purposes of utilizing Table 1, [~~Maximum Impounding Capacity and Height shall be determined in accordance with the definitions provided in 4VAC50-20-30 and~~] Hazard Potential Classification shall be determined in accordance with 4VAC50-20-40.

TABLE 1 Impounding Structure Regulations

Class of Dam	Hazard Potential If Impounding Structure Fails	SIZE CLASSIFICATION		Spillway Design Flood (SDF) ^b	
		Maximum Capacity (Ac-Ft) ^a	Height (Ft) ^a		
I	Probable Loss of Life; Excessive Economic Loss	Large	≥ 50,000	≥ 100	PMF ^c
		Medium	≥ 1,000 & < 50,000	≥ 40 & < 100	PMF
		Small	≥ 50 & < 1,000	≥ 25 & < 40	1/2 PMF to PMF
II	Possible Loss of Life; Appreciable Economic Loss	Large	≥ 50,000	≥ 100	PMF
		Medium	≥ 1,000 & < 50,000	≥ 40 & < 100	1/2 PMF to PMF
		Small	≥ 50 & < 1,000	≥ 25 & < 40	100-YR to 1/2 PMF
III	No Loss of Life Expected; Minimal Economic Loss	Large	≥ 50,000	≥ 100	1/2 PMF to PMF
		Medium	≥ 1,000 & < 50,000	≥ 40 & < 100	100-YR to 1/2 PMF
		Small	≥ 50 & < 1,000	≥ 25 & < 40	50-YR ^d to 100-YR ^e
IV	No Loss of Life Expected; No Economic Loss to Others	≥ 50 (nonagricultural) ≥ 100 (agricultural)		≥ 25 (both)	50-YR to 100-YR

[TABLE 1
Impounding Structure Regulations

Applicable to all impounding structures that 25 feet or greater in height and that create a maximum impounding capacity of 15 acre-feet or greater, and to all impounding structures that are six feet or greater in height and that create a maximum impounding capacity of 50 acre-feet or greater and is not otherwise exempt from regulation by the Code of Virginia.]

Hazard Potential Class of Dam	[SIZE CATEGORIES ^b]		Spillway Design Flood (SDF) [^{cB}]	Minimum Threshold for Incremental Damage [Assessment Analysis]
	[Maximum Impounding Capacity (Ac-Ft)]	[Height (Ft)]		
High	[AH^B]	[AH^B]	PMF [^{DC}]	.50 PMF
Significant	[Large ≥ 50,000]	[≥ 100]	[PMF^D .50 PMF]	[.50 PMF 100-YR^D]
	[Medium ≥ 1,000 & < 50,000]	[≥ 40 & < 100]	[.75 PMF]	[100-YR^E]
	[Small ≥ 15 & < 1,000]	[≥ 6 & < 40]	[.50 PMF]	[100-YR^E]
Low	[Large ≥ 50,000]	[≥ 100]	[.50 PMF 100-YR^D]	[100-YR^E 50-YR^E]
	[Medium ≥ 1,000 & < 50,000]	[≥ 40 & < 100]	[100-YR^E]	[50-YR^F]
	[Small ≥ 15 & < 1,000]	[≥ 6 & < 40]	[100-YR^E]	[50-YR^F]

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~~^aThe factor determining the largest size classification shall govern. [B. The appropriate size category is determined by the largest size associated with the maximum impounding capacity and height of the impounding structure.]~~

^b [C. B.] The spillway design flood (SDF) represents the largest flood that need be considered in the evaluation of the performance for a given project. The impounding structure shall perform so as to safely pass the appropriate SDF. ~~Where a range of SDF is indicated, the magnitude that most closely relates to the involved risk should be selected. The establishment in this chapter of rigid design flood criteria or standards is not intended. Safety must be evaluated in the light of peculiarities and local conditions for each impounding structure and in recognition of the many factors involved, some of which may not be precisely known. Such can only be done by competent, experienced engineering judgment, which the values in Table 1 are intended to supplement, not supplant. Reductions in the established SDF may be evaluated through the use of incremental damage [assessment analysis] pursuant to 4VAC50-20-52. The SDF established for an impounding structure shall not be less than those standards established elsewhere by state law or regulations, including but not limited to the Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60). [Due to potential for future development in the dam break inundation zone that would necessitate higher spillway design flood standards or other considerations, owners may find it advisable to consider a higher spillway design flood standard than is required.]~~

~~^c [D. C.] PMF: Probable maximum flood This means Maximum Flood is the flood that might be expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the region. The PMF is derived from the current probable maximum precipitation (PMP) available from the National Weather Service, NOAA. In some cases local topography or meteorological conditions will cause changes from the generalized PMP values; therefore, it is advisable to contact local, state or federal agencies to obtain the prevailing practice in specific cases. [In some cases, a modified PMF may be calculated utilizing local topography, meteorological conditions, hydrological conditions, or PMP values supplied by NOAA.] Any deviation in the application of established developmental procedures must be explained and justified by the owner's engineer. The owner's engineer must develop PMF hydrographs for 6-, 12-, and 24-hour durations. The hydrograph that creates the largest peak outflow is to be used to determine capacity for nonfailure and failure analysis. Present and planned land-use conditions shall be considered in determining the runoff characteristics of the drainage area.~~

[E. D.] 100-Yr: 100-year flood represents the flood magnitude expected to be equaled or exceeded on the average of once in 100 years. It may also be expressed as an exceedence probability with a 1.0% chance of being equaled

or exceeded in any given year. Present and planned land-use conditions shall be considered in determining the runoff characteristics of the drainage area.

^d [F. E.] 50-Yr: 50-year flood. This means represents the flood magnitude expected to be equaled or exceeded on the average of once in 50 years. It may also be expressed as an exceedence probability with a 2.0% chance of being equaled or exceeded in any given year. Present and planned land-use conditions shall be considered in determining the runoff characteristics of the drainage area.

^e 100 Yr: 100 year flood. This means the flood magnitude expected to be equaled or exceeded on the average of once in 100 years. It may also be expressed as an exceedence probability with a 1.0% chance of being equaled or exceeded in any given year.

[4VAC50-20-51. Special criteria for certain low hazard impounding structures.

A. Notwithstanding the requirements of this chapter, should the failure of a low hazard potential impounding structure cause no expected loss of human life and no economic damage to any property except property owned by the impounding structure owner, then the owner may follow the below requirements instead of the requirements specified in this chapter:

1. No map required pursuant to 4VAC50-20-54 shall be required to be developed for the impounding structure should a licensed professional engineer certify that the impounding structure is a low hazard potential impounding structure and eligible to utilize the provisions of this section;

2. The spillway design flood for the impounding structure is recommended as a minimum 50-year flood; however, no specific spillway design flood shall be mandatory for an impounding structure found to qualify under the requirements of this section;

3. No emergency preparedness plan prepared pursuant to 4VAC50-20-177 shall be required. However, the impounding structure owner shall notify the local emergency services coordinator in the event of a failure or emergency condition at the impounding structure;

4. An owner shall perform inspections of the impounding structure annually in accordance with the requirements of 4VAC50-20-105. No inspection of the impounding structure by a licensed professional engineer shall be required, however, so long as the owner certifies at the time of operation and maintenance certificate renewal that conditions at the impounding structure and downstream are unchanged since the last inspection conducted by a licensed professional engineer; and

5. No certificate or permit fee established in this chapter shall be applicable to the impounding structure.

B. Any owner of an impounding structure electing to utilize the requirements of subsection A of this section shall otherwise comply with all other requirements of this chapter applicable to low hazard impounding structures.

C. The owner shall notify the department immediately of any change in circumstances that would cause the impounding structure to no longer qualify to utilize the provisions of this section.]

4VAC50-20-52. Incremental damage [~~assessment analysis~~]:

A. When appropriate, the spillway design flood requirement may be reduced by the board in accordance with this section.

[~~B. Prior to qualifying for a spillway design flood reduction, certain maintenance conditions must be adequately addressed including, but not limited to, the following:~~

1. Operation and maintenance is determined by the director to be satisfactory and up to date;
2. The impounding structure is not in need of other alteration related to the integrity of the structure;
3. Emergency Action Plan requirements set out in 4VAC50-20-175 or Emergency Preparedness requirements set out in 4VAC50-20-177 have been satisfied;
4. Inspection report requirements have been met and are considered satisfactory by the director;
5. The applicant demonstrates in accordance with the current design procedures and references of 4VAC50-20-320 to the satisfaction of the board that the impounding structure as designed, constructed, operated and maintained does not pose an unreasonable hazard to life and property;
6. The owner satisfies all special requirements imposed by the board; and
7. Certification by the owner that these conditions will continue to be met.

[~~C. After meeting the criteria set out in subsection B of this section, the B. The]~~ owner's engineer may proceed with an incremental damage analysis. Once the owner's engineer has determined the required spillway design flood through application of Table 1, further analysis may be performed to evaluate the limiting flood condition for incremental damages [~~Site-specific conditions should be recognized and considered.~~] This [~~assessment analysis~~] may be used to lower the spillway design flood. In no situation shall the allowable [~~reduction reduced level~~] be less than the level at which the incremental increase in water surface elevation downstream due to failure of [~~a dam an impounding structure~~] is no longer considered to present an [~~unacceptable~~] additional downstream threat. This engineering analysis will need to present water surface elevations at each structure that may be impacted downstream

of the dam. [~~Water depths greater than two feet and overbank flow velocities greater than three feet per second shall be used to define conditions for unacceptable additional downstream threat to persons or property.~~ An additional downstream threat to persons or property is presumed to exist when water depths exceed two feet or when the product of water depth (in feet) and flow velocity (in feet per second) is greater than seven.]

[~~D. C.~~] The spillway design flood shall not be reduced below the minimum threshold values as determined by Table 1.

[~~D.~~ The required spillway design flood shall be subject to reclassification by the board as necessary to reflect changed conditions at the impounding structure and in the dam break inundation zone.]

4VAC50-20-54. Dam break inundation zone mapping.

A. Dam break inundation zone maps shall be provided to the department to meet the requirements set out in Hazard Potential Classifications of Impounding Structures (4VAC50-20-40), Emergency Action Plan for High and Significant Potential Hazard [~~Dams Impounding Structures~~] (4VAC50-20-175), and Emergency Preparedness for Low Hazard Potential [~~Dams Impounding Structures~~] (4VAC50-20-177), as applicable.

B. The location of the end of the inundation mapping should be indicated where the water surface elevation of the dam break inundation zone and the water surface elevation of the spillway design flood during [~~a nondam failure an impounding structure nonfailure~~] event converge to within one foot of each other. [~~This would demonstrate a level where failure of the dam does not further constitute a hazard to downstream life or property.~~] The inundation maps shall be supplemented with water surface profiles [~~and cross-sections at critical areas~~] showing the peak water surface elevation prior to failure and the peak water surface elevation after failure.

C. All inundation zone map(s), except those utilized in meeting the requirements of Emergency Preparedness for Low Hazard Potential [~~Dams Impounding Structures~~] (4VAC50-20-177), shall be signed and sealed by a licensed professional engineer.

D. For determining the hazard potential classification, a minimum of the following shall be provided to the department:

1. A sunny day dam break analysis utilizing the volume retained at the normal or typical water surface elevation of the impounding structure;
2. A dam break analysis utilizing [~~a probable maximum flood the spillway design flood~~] with a dam failure; [~~and~~]

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3. ~~[A dam break An]~~ analysis utilizing ~~[a probable maximum flood the spillway design flood]~~ without a dam failure ~~[; and]~~

[4. For the purposes of future growth planning, a dam break analysis utilizing the probable maximum flood with a dam failure.]

E. To meet the requirements of Emergency Preparedness set out in 4VAC50-20-177, all Low Hazard Potential impounding structures shall provide a simple map, acceptable to the department, demonstrating the general inundation that would result from a dam failure. Such maps do not require preparation by a professional licensed engineer, however, it is preferred that the maps be prepared by a licensed professional engineer.

F. To meet the Emergency Action Plan requirements set out in 4VAC50-20-175, all owners of High and Significant Hazard Potential impounding structures shall provide dam break inundation map(s) representing the impacts that would occur with both a sunny day dam failure and a spillway design flood dam failure.

1. The map(s) shall be developed at a scale sufficient to graphically display downstream inhabited areas and structures, roads, [public utilities that may be affected,] and other pertinent structures within the identified inundation area. In coordination with the local organization for emergency management, a list of downstream inundation zone property owners and occupants, including telephone numbers may be plotted on the map or may be provided with the map for reference during an emergency.

2. ~~[A note shall be included on each map to state: "Mapping of flooded areas and flood wave travel times are approximate. Timing and extent of actual inundation may differ from information presented on this map." Each map shall include the following statement: "The information contained in this map is prepared for use in notification of downstream property owners by emergency management personnel."]~~

4VAC50-20-58. Local government notifications.

For each certificate issued, the impounding structure owner shall send a copy of the certificate to the appropriate local government(s) with planning and zoning responsibilities. A project description and the map(s) required under 4VAC50-20-54 showing the area that could be affected by the impounding structure ~~[breach failure]~~ shall be submitted with the certificate. The department will provide a standard form cover letter for forwarding the certificate copy and accompanying materials.

[4VAC50-20-59. Reporting.

For the purposes of categorizing and reporting information to national and other dam safety databases, impounding structure size shall be classified as noted in Table 2.

Maximum Impounding Capacity (Ac-Ft)	Height (Ft)
Large > 50,000	≥ 100
Medium ≥ 1,000 & < 50,000	≥ 40 & < 100
Small ≥ 15 & < 1,000	≥ 6 & < 40]

Part II Permit Requirements

4VAC50-20-60. Required permits.

A. No person or entity shall construct or begin to construct ~~[a new]~~ impounding structure until the board has issued a construction permit.

B. No person or entity shall alter or begin to alter an existing impounding structure ~~in a manner which would potentially affect its structural integrity~~ until the board has issued an alteration permit, ~~or in the case of an emergency, authorization obtained from the director.~~ The permit requirement may be waived if the director determines that the alteration of improvement will not substantially alter or affect the structural integrity of the impounding structure. Alteration does not mean normal operation and maintenance. If an owner or the owner's engineer has determined that circumstances are impacting the integrity of the impounding structure that could result in the imminent failure of the impounding structure, temporary repairs may be initiated prior to approval from the board. The owner shall notify the department within 24 hours of identifying the circumstances impacting the integrity of the impounding structure. Such emergency notification shall not relieve the owner of the need to obtain an alteration permit as soon as may be practicable, nor shall the owner take action beyond that necessary to address the emergency situation.

C. When the board receives owner submits an application to the board for any permit to construct or alter an impounding structure, the ~~director~~ owner shall also inform the local government ~~of any jurisdiction which~~ or jurisdictions that might be affected by the permit application.

D. In evaluating construction and alteration permit applications the director shall use the ~~most current~~ design criteria and standards referenced in 4VAC50-20-320 ~~of this chapter.~~

4VAC50-20-70. Construction permits.

A. Prior to preparing the complete design report for a ~~construction permit~~ Construction Permit, applicants are encouraged to seek approval of the project concept from the ~~director~~ may submit a preliminary design report to the department to determine if the project concept is acceptable to the department. For this purpose the applicant should submit The preliminary design report should contain, at a minimum, a general description of subdivisions 1 through 4-12 of subsection B of this section and subdivisions 1 and 2 of this subsection:

1. Proposed design criteria and a description of the size of the impounding structure, ground cover conditions, extent of current upstream development ~~of within~~ the watershed and the hydraulic, hydrological and structural features, geologic conditions and the geotechnical engineering assumptions used to determine the foundations foundation, impoundment rim stability and materials to be used.
2. Preliminary drawings of a general nature, including cross sections, plans and profiles of the impounding structure, proposed pool levels and types of spillway(s).

B. An applicant for a ~~construction permit~~ Construction Permit shall submit a design report ~~on official forms. A form for the design report [will be is] available from the department (Design Report for the Construction or Alteration of Virginia Regulated Impounding Structures). The design report shall be prepared in accordance with 4VAC50-20-240 and shall include the following information: The design report is a required element of a complete application for a Construction Permit and shall include the following information:~~

- ~~1. A description of the impounding structure and appurtenances and a proposed classification conforming with this chapter. The description shall include a statement of the purposes for which the impoundment and impounding structure are to be used.~~
1. Project information including a description of the proposed construction, name of the impounding structure, inventory number if available, name of the reservoir, and the purpose of the reservoir.
2. The proposed hazard potential classification in conformance with Table 1 of 4VAC50-20-50.
3. Location of the impounding structure including the city or county, number of feet or miles upstream or downstream of a highway and the highway number, name of the river or the stream, and the latitude and longitude.
4. Owner's name or representative if corporation, mailing address, residential and business telephone numbers, and other means of communication.

5. Owner's engineer's name, firm, professional engineer Virginia number, mailing address, and business telephone number.

6. Impounding structure data including type of material (earth, concrete, masonry or other) and the following design configurations:

- a. Top of [~~dam~~ impounding structure] (elevation);
- b. Downstream toe – lowest (elevation);
- c. Height of [~~dam~~ impounding structure] (feet);
- d. Crest length – exclusive of spillway (feet);
- e. Crest width (feet);
- f. Upstream slope (horizontal [~~and~~ to] vertical); and
- g. Downstream slope (horizontal [~~and~~ to] vertical).

7. Reservoir data including the following:

- a. Maximum capacity (acre-feet);
- b. Maximum pool (elevation);
- c. Maximum pool surface area (acres);
- d. Normal capacity (acre-feet);
- e. Normal pool (elevation);
- f. Normal pool surface area (acres); and
- g. Freeboard [~~normal pool to top of dam~~] (feet).

8. Spillway data including the type, construction material, design configuration, and invert elevation for the low level drain, the principal spillway, and the emergency spillway.

9. Watershed data including drainage area (square miles); type and extent of watershed development; time of concentration (hours); routing procedure; spillway design flood used and state source; design inflow hydrograph volume (acre-feet), peak inflow (cfs), and rainfall duration (hours); and freeboard during passage of the spillway design flood (feet).

~~2-10.~~ A description of properties located in the ~~dam break~~ inundation zone downstream from the site of the proposed impounding structure, including the location and number of ~~residential~~ structures, buildings, roads, utilities and other property that would be endangered should the impounding structure fail.

~~3.~~ A statement from the governing body of the local political subdivision or other evidence confirming that body is aware of the proposal to build an impounding structure and of the land use classifications applicable to the inundation zone. 11. Evidence that the local government or governments have been notified of the proposal by the owner to build an impounding structure.

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4-12. Maps showing the location of the proposed impounding structure that include: the county or city in which the proposed impounding structure would be located, the location of roads, and access to the site, and the outline of the impoundment. Existing aerial photographs or existing topographic maps may be used for this purpose.

5-13. A report of the geotechnical investigations of the foundation soils, ~~of~~ bedrock, or both and of the materials to be used to construct the impounding structure.

6-14. Design assumptions and analyses sufficient to indicate that the impounding structure will be stable during its construction and during the life of the impounding structure under all conditions of ~~reservoir~~ impoundment operations, including rapid filling, flood surcharge, seismic loadings, and rapid drawdown of the impoundment.

7-15. Evaluation of the stability of the ~~reservoir~~ impoundment rim area ~~in order~~ to safeguard against ~~reservoir~~ impoundment rim slides of such magnitude as to create waves capable of overtopping the impounding structure and ~~confirmation~~ evaluation of rim stability during seismic activity.

8-16. Design assumptions and analyses sufficient to indicate that seepage in, around, through or under the impounding structure, foundation and abutments will be reasonably and practically controlled so that internal or external forces or results thereof will not endanger the stability and integrity of the impounding structure. The design report shall also include information on graded filter design.

9-17. Calculations and assumptions relative to hydraulic and structural design of the spillway or spillways and energy dissipater or dissipaters. Spillway capacity shall conform to the criteria of Table 1 and 4VAC50-20-52.

10-18. Provisions to ensure that the impounding structure and appurtenances will be protected against unacceptable deterioration or erosion due to freezing and thawing, wind, wave action, and rain or any combination thereof.

11-19. Other pertinent design data, assumptions and analyses commensurate with the nature of the particular impounding structure and specific site conditions, including when required by ~~the director this chapter,~~ a plan and [water surface] profile of the dam break inundation [zones zone].

12. ~~Erosion and sediment control plans to minimize soil erosion and sedimentation during all phases of construction, operation and maintenance. Projects shall be in compliance with local erosion and sediment control ordinances.~~

13-20. A description of the techniques to be used to divert stream flow during construction so as to prevent hazard to

life, health and property, including a detailed plan and procedures to maintain a stable impounding structure during storm events, a drawing showing temporary diversion devices, and a description of the potential impoundment during construction. Such diversion plans shall also be in accordance with applicable environmental laws.

14-21. A plan ~~of~~ for project construction monitoring and quality control testing to confirm that construction materials and methods performance standards meet the design requirements set forth in the specifications.

15. ~~A proposed schedule indicating construction sequence and time to completion.~~

16-22. Plans and specifications as required by 4VAC50-20-310.

17. ~~An emergency action plan on official forms and evidence that a copy of such plan has been filed with the local organization for emergency management and the State Department of Emergency Management. The plan shall include a method of providing notification and warning to persons downstream, other affected persons or property owners and local authorities in the event of a flood hazard or the impending failure of the impounding structure.~~

18. ~~A proposed impoundment and impounding structure operation and maintenance plan on official forms certified by a professional engineer. This plan shall include a safety inspection schedule and shall place particular emphasis on operating and maintaining the impounding structure in keeping with the project design, so as to maintain its structural integrity and safety during both normal and abnormal conditions which may reasonably be expected to occur during its planned life.~~

~~C. The director or the applicant may request a conference to facilitate review of the applicant's proposal.~~

~~D. The owner shall certify in writing that the operation and maintenance plan as approved by the board will be adhered to during the life of the project except in cases of unanticipated emergency requiring departure therefrom in order to mitigate hazard to life and property. At such time, the owner's engineer and the director shall be notified.~~

~~E. If the submission is not acceptable, the director shall inform the applicant within 60 days and shall explain what changes are required for an acceptable submission.~~

~~F. Within 120 days of receipt of an acceptable design report the board shall act on the application.~~

23. Certification by the owner's engineer that the information provided pursuant to this subsection is true and correct in their professional judgment. Such certification

shall include the engineer's signature, printed name, Virginia number, date, and the engineer's Virginia seal.

24. Owner's signature certifying receipt of the information provided pursuant to this subsection.

C. A plan of construction is a required element of a complete permit application for a Construction Permit and shall include:

1. A construction sequence with milestones.
2. Elements of the work plan that should be considered include, but are not limited to, foundation and abutment treatment, stream or river diversion, excavation and material fill processes, phased fill and compaction, testing and control procedures, construction of permanent spillway and drainage devices.
3. The erosion and sediment control plan, as approved by the local government, which minimizes soil erosion and sedimentation during all phases of construction.
4. The stormwater management plan or stormwater management facility plan, as approved by the local government, if the impounding structure is a stormwater management best management practice.

D. A Temporary Emergency Action Plan is a required element of a complete application for a Construction Permit and shall include:

1. A notification list of state and local emergency response agencies;
2. Provisions for notification of potentially affected residences and structures;
3. Construction site evacuation routes; and
4. Any other special notes particular to the project.

E. Within 120 days of receipt of a complete Construction Permit Application the board shall act on the application. If the application is not acceptable, the director shall inform the applicant within 60 days of receipt and shall explain what changes are required for an acceptable application. A complete Construction Permit Application consists of the following:

1. A final design report, submitted on the department form (Design Report for the Construction or Alteration of Virginia Regulated Impounding Structures), with attachments as needed, and certified by the owner and the owner's engineer;
2. A plan of construction that meets the requirements of subsection C of this section; and
3. A Temporary Emergency Action Plan that meets the requirements of subsection D of this section.

~~G.F. Prior to and during construction the owner shall notify provide the director of with any proposed changes from the approved design, plans, specifications, or operation and maintenance plan of construction. Approval shall be obtained from the director prior to the construction or installation of any changes that will affect the stability integrity or impounding capacity of the impounding structure.~~

~~H.G. The construction permit Construction Permit shall be valid for the plan of construction schedule specified in the approved design report Construction Permit Application. The construction schedule may be amended by the director for good cause at the request of the applicant.~~

~~I.H. Construction must commence within two years after the permit is issued. If construction does not commence within two years after the permit is issued, the permit shall expire, except that the applicant may petition the board for extension of the two-year period and the board may extend such period for good cause with an appropriately updated plan of construction and [temporary emergency action plan Temporary Emergency Action Plan].~~

~~J. The director may revoke a construction permit if any of the permit terms are violated, or if construction is conducted in a manner hazardous to downstream life or property. The director may order the owner to eliminate such hazardous conditions within a period of time limited by the order. Such corrective measures shall be at the owner's expense. The applicant may petition the board to reissue the permit with such modifications as the board determines to be necessary.~~

~~K. The owner's professional engineer shall advise the director when the impounding structure may safely impound water. The director shall acknowledge this statement within 10 days after which the impoundment may be filled under the engineer's supervision. The director's acknowledgement shall act as a temporary operation and maintenance certificate until an operation and maintenance certificate has been applied for and issued in accordance with 4VAC50-20-110.~~

~~I. The board, the director, or both may take any necessary action consistent with the Dam Safety Act (§10.1-604 et seq. of the Code of Virginia) if any terms of this section or of the permit are violated, if the activities of the owner are not in accordance with the approved plans and specifications, if construction is conducted in a manner hazardous to downstream life or property, or for other cause as described in the Act.~~

~~J. Within 90 days after completion of the construction of an impounding structure, the owner shall submit:~~

1. A complete set of record drawings signed and sealed by a licensed professional engineer and signed by the owner;
2. A complete Record Report (Record Report for Virginia Regulated Impounding Structures) signed and sealed by a

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licensed professional engineer and signed by the owner that includes:

a. Project information including the name and inventory number of the structure, name of the reservoir, and whether the report is associated with a new or old structure;

b. Location of the impounding structure including the city or county, number of feet or miles upstream or downstream of a highway and the highway number, name of the river or the stream, and the latitude and longitude;

c. Owner's name or representative if corporation, mailing address, residential and business telephone numbers, and other means of communication;

d. Information on the design report, including who it was prepared by, the date of design report preparation, whether it was for new construction or for an alteration, and the permit issuance date;

e. Owner's engineer's name, firm, professional engineer Virginia number, mailing address, and business telephone number;

f. Impounding structure data including type of material (earth, concrete, masonry or other) and the following configurations:

(1) Top of [~~dam~~ impounding structure] (elevation);

(2) Downstream toe – lowest (elevation);

(3) Height of [~~dam~~ impounding structure] (feet);

(4) Crest length – exclusive of spillway (feet);

(5) Crest width (feet);

(6) Upstream slope (horizontal [~~and~~ to] vertical); and

(7) Downstream slope (horizontal [~~and~~ to] vertical).

g. Reservoir data including the following:

(1) Maximum capacity (acre-feet);

(2) Maximum pool (elevation);

(3) Maximum pool surface area (acres);

(4) Normal capacity (acre-feet);

(5) Normal pool (elevation);

(6) Normal pool surface area (acres); and

(7) Freeboard [~~normal pool to top of dam~~] (feet).

h. Spillway data including the type, construction material, design configuration, and invert elevation for the low level drain, the principal spillway, and the emergency spillway; a description of the low level drain and principal spillway including dimensions, trash guard

information, and orientation of intake and discharge to [~~dam~~ impounding structure] if looking downstream; and a description of the emergency spillway including dimensions and orientation to [~~dam~~ impounding structure] if looking downstream;

i. Watershed data including drainage area (square miles); type and extent of watershed development; time of concentration (hours); routing procedure; spillway design flood used and state source; design inflow hydrograph volume (acre-feet), peak inflow (cfs), and rainfall duration (hours); [and] freeboard during passage of the spillway design flood (feet); [~~and confirmation as to whether the impounding structure has ever been overtopped;~~]

j. Impounding structure history including the date construction was completed, who it was designed by and the date, who it was built by and the date, who performed inspections and dates, description of repairs, and confirmation as to whether the impounding structure has ever been overtopped;

k. A narrative describing the impounding structure procedures for operation, maintenance, filling, emergency action plan implementation, and structure evaluation;

l. A narrative describing the hydraulic and hydrologic data on the spillway design flood, hydrologic records, flood experience, flood potential, reservoir regulation, and comments or recommendations regarding these attributes;

m. A narrative describing stability of the foundation and abutments, embankment materials, and a written evaluation of each;

n. A complete set of record drawings signed and sealed by a licensed professional engineer and signed by the owner;

o. Certification by the owner's engineer that the information provided pursuant to subdivision J 2 of this section is true and correct in their professional judgment. Such certification shall include the engineer's signature, printed name, Virginia number, date, and the engineer's Virginia seal; and

p. Owner's signature certifying receipt of the information provided pursuant to subdivision J 2 of this section.

3. Certification from the licensed professional engineer who has monitored construction of the impounding structure during construction that, to the best of the engineer's judgment, knowledge and belief, the impounding structure and its appurtenances were constructed in conformance with the plans, specifications, drawings and other requirements approved by the board;

4. Operation and Maintenance Certificate Application (Operation and Maintenance Certificate Application for Virginia Regulated Impounding Structures) in accordance with 4VAC50-20-105; and

5. Emergency Action Plan or Emergency Preparedness Plan in accordance with 4VAC50-20-175 or 4VAC50-20-177.

K. Upon completion of construction, the impoundment may be filled upon board issuance of an Operation and Maintenance Certificate.

4VAC50-20-80. Alterations permits.

~~A. Application for a permit to alter an impounding structure in ways which would potentially affect its structural integrity shall be made on official forms. The application shall clearly describe the proposed work with appropriately detailed plans and specifications.~~

~~B. A. Alterations which would potentially affect the structural integrity of an impounding structure include, but are not limited to, changing its the height or otherwise enlarging the dam, increasing the normal pool or principal spillway elevation or physical dimensions, changing the elevation or physical dimensions of the emergency spillway, conducting necessary repairs or structural maintenance, or removing the impounding structure. [Structural maintenance does not include routine maintenance.]~~

~~C. Where feasible an application for an alteration permit shall also include plans and specifications for a device to allow for draining the impoundment if such does not exist.~~

~~D. If the submission is not acceptable, the director shall inform the applicant within 60 days and shall explain what changes are required for an acceptable submission.~~

~~E. Within 120 days of receipt of an acceptable application, the board shall act on the application.~~

B. An applicant for an Alteration Permit shall submit a design report. A form for the design report [~~will be~~ is] available from the department (Design Report for the Construction or Alteration of Virginia Regulated Impounding Structures). The design report shall be prepared in accordance with 4VAC50-20-240. The design report shall include, but not be limited to, the following information:

1. Project information including a description and benefits of the proposed alteration, name of the impounding structure, inventory number if available, name of the reservoir, and the purpose of the reservoir.

2. The hazard potential classification in conformance with Table 1 in 4VAC50-20-50.

3. Location of the impounding structure including the city or county, number of feet or miles upstream or downstream

of a highway and the highway number, name of the river or the stream, and the latitude and longitude.

4. Owner's name or representative if corporation, mailing address, residential and business telephone numbers, and other means of communication.

5. Owner's engineer's name, firm, professional engineer Virginia number, mailing address, and business telephone number.

6. Impounding structure data including type of material (earth, concrete, masonry or other) and the following configurations (note both existing and design configurations for each):

a. Top of [~~dam~~ impounding structure] (elevation);

b. Downstream toe – lowest (elevation);

c. Height of [~~dam~~ impounding structure] (feet);

d. Crest length – exclusive of spillway (feet);

e. Crest width (feet);

f. Upstream slope (horizontal [~~and~~ to] vertical); and

g. Downstream slope (horizontal [~~and~~ to] vertical).

7. Reservoir data including the following (note both existing and design configurations for each):

a. Maximum capacity (acre-feet);

b. Maximum pool (elevation);

c. Maximum pool surface area (acres);

d. Normal capacity (acre-feet);

e. Normal pool (elevation);

f. Normal pool surface area (acres); and

g. Freeboard [~~normal pool to top of dam~~] (feet).

8. Spillway data including the type, construction material, design configuration, and invert elevation for the low level drain, the principal spillway, and the emergency spillway.

9. Watershed data including drainage area (square miles); type and extent of watershed development; time of concentration (hours); routing procedure; spillway design flood used and state source; design inflow hydrograph volume (acre-feet), peak inflow (cfs), and rainfall duration (hours); and freeboard during passage of the spillway design flood (feet).

10. Evidence that the local government has been notified of the alteration and repair plan.

11. Plans and specifications as required by 4VAC50-20-310. The plan view of the [~~dam~~ impounding structure] site should represent all significant structures and

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improvements that illustrate the location of all proposed work.

12. A report of the geotechnical investigations of the foundation soils, bedrock, or both in the areas affected by the proposed alterations and of the materials to be used to alter the impounding structure.

13. Design assumptions and analyses sufficient to indicate that the impounding structure will be stable during the alteration of the impounding structure under all conditions of reservoir operations.

14. Calculations and assumptions relative to design of the improved spillway or spillways, if applicable.

15. Provisions to ensure that the impounding structure and appurtenances during the alteration will be protected against unacceptable deterioration or erosion due to freezing and thawing, wind, wave action and rain or any combination thereof.

16. Other pertinent design data, assumptions and analyses commensurate with the nature of the particular impounding structure and specific site conditions, including when required by this chapter, a plan and [water surface] profile of the dam break inundation [zones zone].

17. If applicable, a description of the techniques to be used to divert stream flow during alteration work so as to prevent hazard to life, health and property, including a detailed plan and procedures to maintain a stable impounding structure during storm events, a drawing showing temporary diversion devices, and a description of the potential impoundment during the alteration. Such diversion plans shall be in accordance with the applicable environmental laws.

18. A plan for project construction monitoring and quality control testing to confirm that materials used in the alteration work and that performance standards meet the design requirements set forth in the specifications.

19. Certification by the owner's engineer that the information provided pursuant to this subsection is true and correct in their professional judgment. Such certification shall include the engineer's signature, printed name, Virginia number, date, and the engineer's Virginia seal.

20. Owner's signature certifying receipt of the information provided pursuant to this subsection.

C. A plan of construction is a required element of complete permit application and shall include:

1. A construction sequence with milestones.

2. Elements of the work plan that should be considered include, but are not limited to, foundation and abutment treatment, excavation and material fill processes, phased fill and compaction, testing and control procedures,

construction of permanent spillway and drainage devices, if applicable.

3. The erosion and sediment control plan, as approved by the local government, which minimizes soil erosion and sedimentation during all phases of construction.

D. Within 120 days of receipt of a complete Alteration Permit Application, the board shall act on the application. If the application is not acceptable, the director shall inform the applicant within 60 days of receipt and shall explain what changes are required for an acceptable application. A complete Alteration Permit Application consists of the following:

1. A final design report with attachments as needed, and certified by the owner;

2. A plan of construction that meets the requirements of subsection C of this section;

3. Any necessary interim provisions to the current Emergency Action Plan or Emergency Preparedness Plan. Interim provisions shall be submitted to the local organization for emergency management, the Virginia Department of Emergency Management, and the department; and

4. If the owner is requesting the deregulation of an impounding structure, the application shall specify whether the impounding structure is to be removed so that the impounding structure is incapable of storing water, either temporarily or permanently; or whether the impounding structure is to be altered in such a manner that either the height or storage capacity of the impounding structure causes the impounding structure to be of less than regulated size.

E. During the alteration work, the owner shall provide the director with any proposed changes from the approved design, plans, specifications, or a plan of construction. Approval shall be obtained from the director prior to the alteration or installation of any changes that will affect the integrity or impounding capacity of the impounding structure.

F. The Alteration Permit shall be valid for the construction sequence with milestones specified in the approved Alteration Permit Application.

G. Work identified in the Alteration Permit must commence within the time frame identified in the Alteration Permit. If work does not commence within the prescribed time frame, the permit shall expire, except that the applicant may petition the board for extension of the prescribed time frame and the board may extend such period for good cause with an updated construction sequence with milestones.

H. The board, the director, or both may take any necessary action consistent with the Dam Safety Act (§10.1-604 et seq. of the Code of Virginia) if any terms of this section or of the

permit are violated, if the activities of the owner are not in accordance with the approved plans and specifications, if the alteration is conducted in a manner hazardous to downstream life or property, or for other cause as described in the Act.

I. Within 90 days after completion of the alteration of an impounding structure, the owner shall submit a complete Record Report. A form for the Record Report [will be is] available from the department (Record Report for Virginia Regulated Impounding Structures). The Record Report [shall be] signed and sealed by a licensed professional engineer and signed by the owner [and shall be sent] to the department indicating [that] the modifications made to the structural features of the impounding structure [have been completed]. This report is not required when the Alteration Permit has been issued for the removal of an impounding structure. The Record Report shall include the following:

[~~a.~~ 1.] Project information including the name and inventory number of the structure, name of the reservoir, and whether the report is associated with a new or old structure;

[~~b.~~ 2.] Location of the impounding structure including the city or county, number of feet or miles upstream or downstream of a highway and the highway number, name of the river or the stream, and the latitude and longitude;

[~~c.~~ 3.] Owner's name or representative if corporation, mailing address, residential and business telephone numbers, and other means of communication;

[~~d.~~ 4.] Information on the design report, including who it was prepared by, the date of design report preparation, whether it was for new construction or for an alteration, and the permit issuance date;

[~~e.~~ 5.] Owner's engineer's name, firm, professional engineer Virginia number, mailing address, and business telephone number;

[~~f.~~ 6.] Impounding structure data including type of material (earth, concrete, masonry or other) and the following configurations:

[~~(1)~~ a.] Top of [~~dam~~ impounding structure] (elevation);

[~~(2)~~ b.] Downstream toe – lowest (elevation);

[~~(3)~~ c.] Height of [~~dam~~ impounding structure] (feet);

[~~(4)~~ d.] Crest length – exclusive of spillway (feet);

[~~(5)~~ e.] Crest width (feet);

[~~(6)~~ f.] Upstream slope (horizontal [~~and~~ to] vertical); and

[~~(7)~~ g.] Downstream slope (horizontal [~~and~~ to] vertical).

[~~g.~~ 7.] Reservoir data including the following:

[~~(1)~~ a.] Maximum capacity (acre-feet);

[~~(2)~~ b.] Maximum pool (elevation);

[~~(3)~~ c.] Maximum pool surface area (acres);

[~~(4)~~ d.] Normal capacity (acre-feet);

[~~(5)~~ e.] Normal pool (elevation);

[~~(6)~~ f.] Normal pool surface area (acres); and

[~~(7)~~ g.] Freeboard [~~normal pool to top of dam~~] (feet).

[~~h.~~ 8.] Spillway data including the type, construction material, design configuration, and invert elevation for the low level drain, the principal spillway, and the emergency spillway; a description of the low level drain and principal spillway including dimensions, trash guard information, and orientation of intake and discharge to [~~dam~~ impounding structure] if looking downstream; and a description of the emergency spillway including dimensions and orientation to [~~dam~~ impounding structure] if looking downstream;

[~~i.~~ 9.] Watershed data including drainage area (square miles); type and extent of watershed development; time of concentration (hours); routing procedure; spillway design flood used and state source; design inflow hydrograph volume (acre-feet), peak inflow (cfs), and rainfall duration (hours); and freeboard during passage of the spillway design flood (feet);

[~~j.~~ 10.] Impounding structure history including the date construction was completed, who it was designed by and the date, who it was built by and the date, who performed inspections and dates, description of repairs, and confirmation as to whether the impounding structure has ever been overtopped;

[~~k.~~ 11.] A narrative describing the impounding structure procedures for operation, maintenance, emergency action plan implementation, and structure evaluation;

[~~l.~~ 12.] A narrative describing the hydraulic and hydrologic data on the spillway design flood, hydrologic records, flood experience, flood potential, reservoir regulation, and comments or recommendations regarding these attributes;

[~~m.~~ 13.] A narrative describing stability of the foundation and abutments, embankment materials, and a written evaluation of each;

[~~n.~~ 14.] A complete set of record drawings signed and sealed by a licensed professional engineer and signed by the owner;

[~~o.~~ 15.] Certification by the owner's engineer that the information provided pursuant to [~~subdivision 1-2 of this section~~ this subsection] is true and correct in their professional judgment. Such certification shall include the

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engineer's signature, printed name, Virginia number, date, and the engineer's Virginia seal; and

[~~p. 16.~~] Owner's signature certifying receipt of the information provided pursuant to [~~subdivision 1 2 of this section~~ this subsection] .

J. For altered impounding structures, a certification from a licensed professional engineer who has monitored the alteration of the impounding structure that, to the best of the engineer's judgment, knowledge, and belief, the impounding structure and its appurtenances were altered in conformance with the plans, specifications, drawings and other requirements approved by the board.

4VAC50-20-90. Transfer of permits.

A. Prior to the transfer of ownership of a permitted impounding structure the permittee shall notify the director in writing and the new owner shall file a transfer application on official forms notification with the department. A form for the transfer notification [~~will be~~ is] available from the department (Transfer of Impounding Structure Notification form Past Owner to New Owner). The new owner shall amend the existing permit application as necessary and shall certify to the director that he is aware of and will comply with all of the requirements and conditions of the permit.

B. The [~~Transfer Notification~~ transfer notification] shall include the following required information:

1. Project information including the name and inventory number of the structure, name of the reservoir, and impoundment hazard classification;

2. Location of the impounding structure including the city or county, number of feet or miles upstream or downstream of a highway and the highway number, name of the river or the stream, and the latitude and longitude;

3. Type of certificates and permits to be transferred including effective date and expiration date of all certificates and permits;

4. Past owner's name, mailing address, and residential and business telephone numbers;

5. New owner's name, mailing address, and residential and business telephone numbers;

6. Request to transfer certification statement signed and dated by the past owner;

7. Certification of compliance with permit or certificate with all said terms and conditions signed and dated by the new owner; and

8. Contact information updates for Emergency Action Plan or Emergency Preparedness Plan provided by the new owner. Such updates shall include the name, mailing address, and residential and business telephone numbers for the [~~dam~~ impounding structure] owner, [~~dam~~

impounding structure] operator, rainfall and staff gage observer, and alternate observer.

Part III

Certificate Requirements

4VAC50-20-100. Operation and maintenance certificates. (Repealed.)

A. A Class I Operation and Maintenance Certificate is required for a Class I Hazard potential impounding structure. The certificate shall be for a term of six years. It shall be updated based upon the filing of a new reinspection report certified by a professional engineer every two years.

B. A Class II Operation and Maintenance Certificate is required for a Class II Hazard potential impounding structure. The certificate shall be for a term of six years. It shall be updated based upon the filing of a new reinspection report certified by a professional engineer every three years.

C. A Class III Operation and Maintenance Certificate is required for a Class III Hazard potential impounding structure. The certificate shall be for a term of six years.

D. The owner of a Class I, II or III impounding structure shall provide the director an annual owner's inspection report on official forms in years when no professional reinspection is required and may be done by the owner or his representative.

E. If an Operation and Maintenance Certificate is not updated as required, the board shall take appropriate enforcement action.

F. The owner of a Class I, II or III impounding structure shall apply for the renewal of the six year operation and maintenance certificate 90 days prior to its expiration in accordance with 4VAC50-20-120 of this chapter.

G. A Class IV impounding structure will not require an operation and maintenance certificate. An inventory report is to be prepared as provided in 4VAC50-20-120 B and filed by the owner on a six year interval, and an owners inspection report filed annually.

H. The owner of any impounding structure, regardless of its hazard classification, shall notify the board immediately of any change in either cultural features downstream from the impounding structure or of any change in the use of the area downstream that would present hazard to life or property in the event of failure.

Part III

Certificate Requirements

4VAC50-20-105. Regular Operation and Maintenance Certificates.

A. A Regular Operation and Maintenance Certificate is required for an impounding structure. Such six-year

certificates shall include the following based on hazard classification:

1. High Hazard Potential Regular Operation and Maintenance Certificate;
2. Significant Hazard Potential Regular Operation and Maintenance Certificate; or
3. Low Hazard Potential Regular Operation and Maintenance Certificate.

B. The owner of an impounding structure shall apply for the renewal of the six-year Regular Operation and Maintenance Certificate 90 days prior to its expiration. If a Regular Operation and Maintenance Certificate is not renewed as required, the board shall take appropriate enforcement action.

C. Any owner of an impounding structure that does not have a Regular Operation and Maintenance Certificate or any owner renewing a Regular Operation and Maintenance Certificate shall file an Operation and Maintenance Certificate Application. A form for the application [~~will be~~ is] available from the department (Operation and Maintenance Certificate Application for Virginia Regulated Impounding Structures). Such application shall be signed by the owner and signed and sealed by a licensed professional engineer. The following information shall be submitted on or with the application:

1. The application shall include the following required information:
 - a. The name of structure and inventory number;
 - b. The proposed hazard potential classification;
 - c. Owner's name or representative if corporation, mailing address, residential and business telephone numbers, and other means of communication;
 - d. An operating plan and schedule including a narrative on the operation of control gates and spillways and the impoundment drain;
 - e. For earthen embankment [~~dams~~ impounding structures] , a maintenance plan and schedule for the embankment, principal spillway, emergency spillway, low-level outlet, impoundment area, downstream channel, and staff gages;
 - f. For concrete [~~dams~~ impounding structures] , a maintenance plan and schedule for the upstream face, downstream face, crest of dam, galleries, tunnels, abutments, spillways, gates and outlets, and staff gages;
 - g. An inspection schedule for operator inspection, maintenance inspection, technical safety inspection, and overtopping situations;
 - h. A schedule including the rainfall amounts, emergency spillway flow levels or storm event that initiates the

Emergency Action or Preparedness Plan and the frequency of observations;

i. A statement as to whether or not the current hazard potential classification for the [~~dam~~ impounding structure] is appropriate and whether or not additional work is needed to make an appropriate hazard potential designation;

j. For newly constructed or recently altered impounding structures, a certification from a licensed professional engineer who has monitored the construction or alteration of the impounding structure that, to the best of the engineer's judgment, knowledge, and belief, the impounding structure and its appurtenances were constructed or altered in conformance with the plans, specifications, drawings and other requirements approved by the board;

k. Certification by the owner's engineer that the Operation and Maintenance Certificate Application information provided pursuant to subdivision 1 of this subsection is true and correct in their professional judgment. Such certification shall include the engineer's signature, printed name, Virginia number, date, and the engineer's Virginia seal; and

l. Owner's signature certifying the Operation and Maintenance Certificate Application information provided pursuant to subdivision 1 of this subsection and that the operation and maintenance plan and schedule shall be conducted in accordance with this chapter.

2. An Inspection Report (Annual Inspection Report for Virginia Regulated Impounding Structures) in accordance with subsection E of this section;

3. An Emergency Action Plan in accordance with 4VAC50-20-175 or an Emergency Preparedness Plan in accordance with 4VAC50-20-177 and evidence that the required copies of such plan have been submitted to the local organization for emergency management and the Virginia Department of Emergency Management; and

4. Any additional analysis determined necessary by the director, the board or the owner's engineer to address public safety concerns. Such additional analysis may include, but not be limited to, seismic stability, earthen spillway integrity, adequate freeboard allowance, stability assessment of the impoundment's foundation, potential liquefaction of the embankment, overturning or sliding of a concrete structure and other structural stress issues.

D. If the Operation and Maintenance Certificate Application submittal is found to be not complete, the director shall inform the applicant within 30 days and shall explain what changes are required for an acceptable submission. Within 60 days of receipt of a complete application the board shall act upon the application. Upon finding that the impounding

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structure as currently operating is in compliance with this chapter, the board shall issue a Regular Operation and Maintenance Certificate. Should the board find that the impounding structure as currently operating is not in compliance with this chapter, the board may deny the permit application or issue a Conditional Operation and Maintenance Certificate in accordance with 4VAC50-20-150.

E. Inspections shall be performed on an impounding structure annually.

1. Inspection Reports (Annual Inspection Report for Virginia Regulated Impounding Structures) signed and sealed by a licensed professional engineer shall be submitted to the department in accordance with the following schedule:

- a. For a High Hazard Potential impounding structure, every two years,
- b. For a Significant Hazard Potential impounding structure, every three years,
- c. For a Low Hazard Potential impounding structure, every six years.

In years when an Inspection Report signed and sealed by a licensed professional engineer is not required, an owner shall submit the Annual Inspection Report for Virginia Regulated Impounding Structures.

2. The Inspection Report shall include the following required information:

- a. Project information including the name and inventory number of structure, name of the reservoir, and purpose of the reservoir;
- b. City or county where the impounding structure is located;
- c. Owner's name or representative if corporation, mailing address, residential and business telephone numbers, and other means of communication;
- d. Owner's engineer's name, firm, professional engineer Virginia number, mailing address, and business telephone number;
- e. Inspection observation of the impounding structure including the following:
 - (1) Earthen embankment information including any embankment alterations; erosion; settlement, misalignments or cracks; seepage and seepage flow rate and location;
 - (2) Upstream slope information including notes on woody vegetation removed, rodent burrows discovered, and remedial work performed;
 - (3) Intake structure information including notes on deterioration of concrete structures, exposure of rebar

reinforcement, need to repair or replace trash rack, any problems with debris in the reservoir, and whether the drawdown valve operated;

(4) Abutment contacts including notes on seepage and seepage flow rate and location;

(5) Earthen emergency spillway including notes on obstructions to flow and plans to correct, rodent burrows discovered, and deterioration in the approach or discharge channel;

(6) Concrete emergency spillway including notes on the deterioration of the concrete, exposure of rebar reinforcement, any leakage below concrete spillway, and obstructions to flow and plans to correct;

(7) Downstream slope information including notes on woody vegetation removed, rodent burrows discovered, whether seepage drains are working, and any seepage or wet areas;

(8) Outlet pipe information including notes on any water flowing outside of discharge pipe through the [~~dam~~ impounding structure] and a description of any reflection or damage to the pipe;

(9) Stilling basin information including notes on the deterioration of the concrete, exposure of rebar reinforcement, deterioration of the earthen basin slopes, repairs made, and any obstruction to flow;

(10) Gates information including notes on gate malfunctions or repairs, corrosion or damage, and whether any gates were operated and if so how often and to what extreme;

(11) Reservoir information including notes on new developments upstream of the dam, slides or erosion of lake banks, and general comments to include silt, algae, or other influence factors;

(12) Instruments information including any reading of instruments and any installation of new instruments; and

(13) General information including notes on new development in the downstream [floodplain dam break inundation zone] that would impact hazard classification [or spillway design flood requirements], the maximum stormwater discharge or peak elevation during the previous year, whether general maintenance was performed and when, and actions that need to be completed before the next inspection.

f. Evaluation rating of the [~~dam~~ impounding structure] and appurtenances (excellent, good, or poor), general comments, and recommendations;

g. Certification by the owner and date of inspection; and

h. Certification and seal by the owner's engineer and date of inspection, as applicable.

F. The owner of an impounding structure shall notify the department immediately of any change in the use of the area downstream that would impose hazard to life or property in the event of failure.

4VAC50-20-110. ~~Operation and maintenance certificate for newly constructed impounding structures. (Repealed.)~~

A. ~~Within 180 days after completion of the construction of an impounding structure, the owner shall submit:~~

- ~~1. A complete set of as built drawings certified by a professional engineer and an as built report on official forms.~~
- ~~2. A copy of a certificate from the professional engineer who has inspected the impounding structure during construction certifying that, to the best of his judgment, knowledge and belief, the impounding structure and its appurtenances were constructed in conformance with the plans, specifications, drawings and other requirements approved by the board.~~
- ~~3. A copy of the operation and maintenance plan and emergency action plan submitted with the design report including any changes required by the director.~~

B. ~~If the director finds that the operation and maintenance plan or emergency action plan is deficient, he shall return it to the owner within 60 days with suggestions for revision.~~

C. ~~Within 60 days of receipt of the items listed in subsection A above, if the board finds that adequate provision has been made for the safe operation and maintenance of the impounding structure, the board shall issue an operation and maintenance certificate.~~

4VAC50-20-120. ~~Operation and maintenance certificates for existing impounding structures. (Repealed.)~~

A. ~~Any owner of an impounding structure other than a Class IV impounding structure which has already filed an inventory report that does not have an operation and maintenance certificate or any owner renewing an operation and maintenance certificate shall file an application with the board.~~

B. ~~The application for an operation and maintenance certificate shall be on official forms and shall include:~~

- ~~1. A reinspection report for Class I and II impounding structures. The reinspection report shall include an update of conditions of the impounding structure based on a previous safety inspection as required by the board, a previous reinspection report or an as built report.~~
- ~~2. An inventory report for Class III impounding structures. The inventory report shall include:

 - ~~a. The name and location of the impounding structure and the name of the owner.~~~~

~~b. The description and dimensions of the impounding structure, the spillways, the reservoir and the drainage area.~~

~~e. The history of the impounding structure which shall include the design, construction, repairs, inspections and whether the structure has been overtopped.~~

~~d. Observations of the condition of the impounding structure, reservoir, and upstream and downstream areas.~~

~~e. Any changes in the impounding structure, reservoir, and upstream and downstream areas.~~

~~f. Recommendations for remedial work.~~

~~3. An impoundment and impounding structure operation and maintenance plan certified by a professional engineer. This plan shall place particular emphasis on operating and maintaining the impounding structure in keeping with the project design in such manner as to maintain its structural integrity and safety during both normal and abnormal conditions which may reasonably be expected to occur during its planned life. The safety inspection report required by the board should be sufficient to serve as the basis for the operation and maintenance plan for a Class I and Class II impounding structure. For a Class III impounding structure, the operation and maintenance plan shall be based on the data provided in the inventory report.~~

~~4. An emergency action plan and evidence that a copy of such plan has been filed with the local organization for emergency management and the State Department of Emergency Management. The plan shall include a method of providing notification and warning to persons downstream, other affected persons or property owners and local authorities in the event of a flood hazard or the impending failure of the impounding structure.~~

~~C. The owner shall certify in writing that the operation and maintenance plan approved by the board will be adhered to during the life of the project except in cases of emergency requiring departure therefrom in order to mitigate hazard to life and property, at which time the owner's engineer and the director shall be notified.~~

~~D. If the director finds that the operation and maintenance plan or emergency action plan is deficient, he shall return it to the owner within 60 days with suggestions for revision.~~

~~E. Within 60 days of receipt of an acceptable application if the board finds that adequate provision has been made for the safe operation and maintenance of the impounding structure, the board shall issue an operation and maintenance certificate.~~

4VAC50-20-125. Delayed effective date for Spillway Design Flood requirements for impounding structures.

A. If an impounding structure has been determined to have an adequate spillway capacity prior to [the effective date of

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~~these regulations September 26, 2008,] and is currently operating under a Regular Operation and Maintenance Certificate, but will now require spillway modifications due to changes in these regulations, the owner shall submit to the board an Alteration Permit Application in accordance with 4VAC50-20-80 to address spillway capacity at the time of the expiration of their Regular Operation and Maintenance Certificate or [within three years of the effective date of these regulations, by September 26, 2011,] whichever is later. The Alteration Permit Application shall contain a construction sequence with milestones for completing the necessary improvements within five years of Alteration Permit issuance. The board may approve an extension of the prescribed time frame for good cause. Should the owner be able to demonstrate that no spillway capacity change is necessary, the impounding structure may be found to be in compliance with this chapter.~~

~~B. In accordance with 4VAC50-20-105, the owner shall submit the Operation and Maintenance Certificate Application (Operation and Maintenance Certificate Application for Virginia Regulated Impounding Structures), the Emergency Action Plan or Emergency Preparedness Plan, and the Inspection Report (Annual Inspection Report for Virginia Regulated Impounding Structures) 90 days prior to the expiration of the Regular Operation and Maintenance Certificate.~~

~~C. If circumstances warrant more immediate repairs to the impounding structure, the board may direct alterations to the spillway to be completed sooner.~~

~~D. During this delay period, owners are required to address other deficiencies that may exist that are not related to the spillway design flood.~~

~~4VAC50-20-130. Existing impounding structures constructed prior to July 1, 1982. (Repealed.)~~

~~A. Many existing impoundment structures were designed and constructed prior to the enactment of the Dam Safety Act, and may not satisfy current criteria for new construction. The board may issue an operation and maintenance certificate for such structures provided that:~~

- ~~1. Operation and maintenance is determined by the director to be satisfactory and up to date;~~
- ~~2. Annual owner's inspection reports have been filed with and are considered satisfactory by the director;~~
- ~~3. The applicant proves in accordance with the current design procedures and references of 4VAC50-20-320 to the satisfaction of the board that the impounding structure as designed, constructed, operated and maintained does not pose an unreasonable hazard to life and property; and~~
- ~~4. The owner satisfies all special requirements imposed by the board.~~

~~B. When appropriate with existing impounding structures only, the spillway design flood requirement may be reduced by the board to the spillway discharge at which dam failure will not significantly increase the downstream hazard existing just prior to dam failure provided that the conditions of 4VAC50-20-130-A have been met.~~

~~4VAC50-20-140. Existing impounding structures constructed after July 1, 1982. (Repealed.)~~

~~The board may issue an operation and maintenance certificate for an impounding structure having a construction permit issued after July 1, 1982, and shall not require upgrading to meet new more stringent criteria unless the board determines that the new criteria must be applied to prevent an unreasonable hazard to life or property.~~

~~4VAC50-20-150. Conditional operation and maintenance certificate.~~

~~A. During the review of any ~~operation~~ Operation and maintenance application Maintenance Certificate Application (Operation and Maintenance Certificate Application for Virginia Regulated Impounding Structures) completed in accordance with 4VAC50-20-105 should the director determine that the impounding structure has nonimminent deficiencies of a nonimminent danger category, the director may recommend that the board issue a conditional operation Conditional Operation and maintenance certificate Maintenance Certificate.~~

~~B. The ~~conditional operation~~ Conditional Operation and maintenance certificate Maintenance Certificate for Class I, II and III High, Significant, and Low Hazard Potential impounding structures shall be for a maximum term of two years. This certificate will allow the owner to continue normal operation and maintenance of the impounding structure, and shall require that the owner correct the deficiencies on a schedule [~~determined~~ approved] by the director board.~~

~~C. A ~~conditional certificate~~ Conditional Certificate may be renewed extended in accordance with the procedures of 4VAC50-20-120 4VAC50-20-155 provided that annual owner inspection reports Inspection Reports (Annual Inspection Report for Virginia Regulated Impounding Structures) are on file, and the board determines that the owner is proceeding with the necessary corrective actions.~~

~~D. Once the deficiencies are corrected, the board shall issue an ~~operation~~ a Regular Operation and maintenance certificate Maintenance Certificate based upon any required revisions to the original application the impounding structure's meeting the requirements of 4VAC50-20-105.~~

~~4VAC50-20-155. Extension of Operation and Maintenance Certificates.~~

~~The board may extend an Operation and Maintenance Certificate for impounding structures provided that the owner~~

submits a written request justifying an extension, the amount of time needed to comply with the requirements set out in the current Operation and Maintenance Certificate, and any required fees. The owner must have demonstrated substantial and continual progress towards meeting the requirements [of the certificate in order to receive an extension] .

4VAC50-20-160. Additional operation and maintenance requirements.

A. The owner of an impounding structure shall not, through action or inaction, cause or allow such structure to impound water following receipt of a written report from the owner's engineer that the impounding structure will not safely impound water.

B. In accordance with §10.1-609.2 of the Code of Virginia, [~~dam~~ impounding structure] owners shall not permit the growth of trees and other woody vegetation and shall remove any such vegetation from the slopes and crest of embankments and the emergency spillway area, and within a distance of 25 feet from the toe of the embankment and abutments of the dam.

4VAC50-20-165. Agricultural exemption.

A. Impounding structures operated primarily for agricultural purposes that are less than 25 feet in height or that create a maximum impoundment capacity smaller than 100 acre-feet are exempt from the Impounding Structure Regulations.

B. An owner covered by an agricultural exemption pursuant to §10.1-604 of the Code of Virginia and 4VAC50-20-30 may validate such exemption by submitting an Agricultural Exemption Report (Agricultural Exemption Report for Impounding Structures). The Agricultural Exemption Report shall include the following information:

1. Project information including the name and inventory number of the structure and name of the reservoir;
2. Location of the impounding structure including the city or county, number of feet or miles upstream or downstream of a highway and the highway number, name of the river or the stream, and the latitude and longitude;
3. Owner's name or representative if corporation, mailing address, residential and business telephone numbers, and other means of communication;
4. The impounding structure height in feet and the maximum impounding capacity in acre-feet;
5. A list of the agricultural functions for which the impoundment supplies water;
6. The date of validation; and
7. The owner's signature validating that the impoundment is operated primarily for agricultural purposes and is exempt from the regulations.

C. The Agricultural Exemption Report may be verified by the department through a [~~possible~~] site visit.

4VAC50-20-170. Transfer of certificates.

A. Prior to the transfer of ownership of an impounding structure the certificate holder shall notify the director in writing and the new owner shall file a transfer ~~application on official forms~~ notification with the department. A form for the transfer notification [~~will be~~ is] available from the department (Transfer of Impounding Structure Notification from Past Owner to New Owner). The new owner may elect to continue the ~~current~~ existing operation and maintenance certificate for the remaining term or he may apply for a new certificate in accordance with ~~4VAC50-20-120~~ 4VAC50-20-105. If the owner elects to continue the existing certificate, he shall amend the existing certificate application as necessary and shall certify to the director that he is aware of and will comply with all of the requirements and conditions of the certificate.

B. The [~~Transfer Notification~~ transfer notification] shall include the following required information:

1. Project information including the name and inventory number of the structure, name of the reservoir, and impoundment hazard classification;
2. Location of the impounding structure including the city or county, number of feet or miles upstream or downstream of a highway and the highway number, name of the river or the stream, and the latitude and longitude;
3. Type of certificates and permits to be transferred including effective date and expiration date of all certificates and permits;
4. Past owner's name, mailing address, and residential and business telephone numbers;
5. New owner's name, mailing address, and residential and business telephone numbers;
6. Request to transfer certification statement signed and dated by the past owner;
7. Certification of compliance with permit or certificate with all said terms and conditions signed and dated by the new owner; and
8. Contact information updates for Emergency Action Plan or Emergency Preparedness Plan provided by the new owner. Such updates shall include the name, mailing address, and residential and business telephone numbers for the [~~dam~~ impounding structure] owner, [~~dam~~ impounding structure] operator, rainfall and staff gage observer, and alternate observer.

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4VAC50-20-175. Emergency Action Plan (EAP) for High and Significant Hazard Potential [~~Dams~~ impounding structures] :

A. In order to protect life during potential emergency conditions at [~~a dam~~ an impounding structure] , and to ensure effective, timely action is taken should [~~a dam~~ an impounding structure] emergency occur, an EAP shall be required for each High and Significant Hazard Potential impounding structure. The EAP shall be coordinated with the Department of Emergency Management in accordance with §44-146.18 of the Code of Virginia. The EAP required by these regulations shall be incorporated into local and interjurisdictional emergency plans pursuant to §44-146.19 of the Code of Virginia.

B. It is the [~~dam~~ impounding structure] owner's responsibility to develop, maintain, exercise, and implement a site-specific EAP.

C. An EAP shall be submitted every six years. The EAP shall be submitted with the owner's submittal of their Regular Operation and Maintenance Certificate application (Operation and Maintenance Certificate Application for Virginia Regulated Impounding Structures).

D. The owner shall update [and resubmit] the EAP immediately upon becoming aware of necessary changes to keep the EAP workable. Should [~~a dam~~ an impounding structure] be reclassified, an EAP in accordance with this section shall be submitted.

E. A drill shall be conducted annually for each high or significant hazard impounding structure. To the extent practicable, the drill should include a face-to-face meeting with the local emergency management agencies responsible for any necessary evacuations to review the EAP and ensure the local emergency management agencies understand the actions required during an emergency. A table-top exercise shall be conducted once every [~~three six~~] years [, although more frequent table-top exercises are encouraged] . [Drills and table-top exercises for multiple impounding structures may be performed in combination if the involved parties are the same.] Owners shall certify to the department annually that a drill, a table-top exercise, or both has been completed [, ~~provide a critique of the exercise or exercises~~] and [provide] any revisions or updates to the EAP or a statement that no revisions or updates are needed.

F. [~~Dam~~ Impounding structure] owners shall test existing monitoring, sensing, and warning equipment at remote or unattended [~~dams~~ impounding structures] at least twice per year [or as performed by the Virginia Department of Emergency Management pursuant to §10.1-609.1 of the Code of Virginia] and maintain a record of such tests.

G. An EAP shall contain the following seven basic elements unless otherwise specified in this subsection.

1. Notification chart. A notification chart shall be included for all classes of [~~dams~~ impounding structures] that shows who is to be notified, by whom, and in what priority. The notification chart shall include contact information providing 24-hour telephone coverage for all responsible parties [including, but not limited to, the impounding structure operator or manager, state and local emergency management officials, local police or sheriffs' departments, and the owner's engineer] . [The notification chart shall also identify the process by which downstream property owners will be notified, and what party or parties will be responsible for making such notifications.]

2. Emergency Detection, Evaluation, and Classification. The EAP shall include a discussion of the procedures for timely and reliable detection, evaluation, and classification of emergency situations considered to be relevant to the project setting and impounding features. Each relevant emergency situation is to be documented to provide an appropriate course of action based on the urgency of the situation. Where appropriate, situations should address [~~dam breaks~~ impounding structure failures] that are imminent or in progress, a situation where the potential for [~~dam~~ impounding structure] failure is rapidly developing, and a situation where the threat is slowly developing.

3. Responsibilities. The EAP shall specify responsibilities for EAP-related tasks. The EAP shall also clearly designate the responsible party for making the decision that an emergency condition no longer exists at the [~~dam~~ impounding structure] . The EAP shall include procedures and the responsible parties for notifying to the extent possible any known local occupants, owners, or lessees of downstream properties potentially impacted by the [~~dam's~~ impounding structure's] failure.

4. Preparedness. The EAP shall include a section that describes preparedness actions to be taken both before and following development of emergency conditions.

5. Dam Break Inundation Maps. The EAP shall include dam break inundation maps developed in accordance with 4VAC50-20-54.

6. Appendices. The appendices shall contain information that supports and supplements the material used in the development and maintenance of the EAP such as analyses of [~~dam break~~ impounding structure failure] floods; plans for training, exercising, updating, and posting the EAP; and other site-specific concerns.

7. Certification. [~~The EAP shall include a section that is signed by all parties with assigned responsibilities in the EAP pursuant to this subdivision 3 of this subsection, where they indicate their receipt of the EAP.~~ The EAP shall include a section that identifies all parties with assigned responsibilities in the EAP pursuant to subdivision 3 of this subsection. This will include

certification that the EAP has been received by these parties.] The preparer's name, title, and contact information shall be printed in this section. The preparer's signature shall also be included in the certification section. The local organization for emergency management shall provide the owner and the department with any deficiencies they may note.

H. The development of the EAP shall be coordinated with all entities, jurisdictions, and agencies that would be affected by [~~a dam~~ an impounding structure] failure or that have statutory responsibilities for warning, evacuation, and postflood actions. Consultation with state and local emergency management officials at appropriate levels of management responsible for warning and evacuation of the public shall occur to ensure that there is awareness of their individual and group responsibilities. The owner shall also coordinate with the local organization for emergency management to identify properties that upon failure of the impounding structure would result in economic impacts.

I. The EAP, or any updates to an existing EAP, shall be submitted to the department, the local organization for emergency management, and the Virginia Department of Emergency Management. Two copies shall be provided to the department.

J. The following format shall be used as necessary to address the requirements of this section.

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4VAC50-20-177. Emergency Preparedness Plan for Low Hazard [~~Dams~~ impounding structures] :

[~~A.~~] Low Hazard [~~Dams~~ impounding structures] shall provide information for emergency preparedness to the department, the local organization for emergency management and the Virginia Department of Emergency Management. A form for the submission [~~will-be~~ is] available from the department (Emergency Preparedness Plan for Low Hazard Virginia Regulated Impounding Structures). The information shall include, but not be limited, to the following:

1. Name of the impounding structure, inventory number, city or county, latitude, and longitude;

2. Owner's name, mailing address, residential and business telephone numbers, and other means of communication. Contact information shall provide for 24-hour telephone contact capability;

3. [~~Dam~~ Impounding structure] operator's name, mailing address, residential and business telephone numbers, and other means of communication. Contact information shall provide for 24-hour telephone contact capability;

4. Rainfall and staff gage observer's name, mailing address, residential and business telephone numbers, and other means of communication. Contact information shall provide for 24-hour telephone contact capability;

5. Contact information for alternate operator and alternate rainfall and staff gage observer, if applicable;

6. Contact information for the local dispatch center nearest [~~dam~~ impounding structure] including address and 24-hour telephone number;

7. City or county emergency services coordinator's name, mailing address, residential and business telephone numbers, and other means of communication;

8. A procedure and the responsible parties for notifying to the extent possible any known local occupants, owners, or lessees of downstream properties potentially impacted by the [~~dam's~~ impounding structure's] failure;

9. A discussion of the procedures for timely and reliable detection, evaluation, and classification of emergency situations considered to be relevant to the project setting and impounding features. Each relevant emergency situation is to be documented to provide an appropriate course of action based on the urgency of the situation;

10. A simple dam break inundation map acceptable to the director, demonstrating the general inundation that would

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result from [~~a dam~~ an impounding structure] failure. Such maps required pursuant to this section do not require preparation by a professional licensed engineer; however, maps prepared by a licensed professional engineer are preferred;

11. Identification of public roads downstream noting the highway number and distance below the [~~dam~~ impounding structure]. If roads exist, contact information for the resident Virginia Department of Transportation engineer or city or county engineer including address and 24-hour telephone numbers;

12. Amount of rainfall that will initiate a Stage II Condition in inches per six hours, inches per 12 hours, and inches per 24 hours and a Stage III Condition in inches per six hours, inches per 12 hours, and inches per 24 hours;

13. Amount of flow in the emergency spillway that will initiate a Stage II Condition in feet (depth of flow) and a Stage III Condition in feet (depth of flow);

14. Staff gage location and description; the frequency of observations by the rainfall or staff gage observer under a Stage I Condition, and Stage II Condition, and a Stage III Condition; and a clear description of an access route and means of travel during flood conditions to the [~~dam~~ impounding structure];

15. Evacuation procedures including notification, monitoring, evacuation, and reporting processes and responsibilities;

16. Evidence that the required copies of such plan have been submitted to the local organization for emergency management and the Virginia Department of Emergency Management; and

17. Certification of the plan by the owner.

Part IV Procedures

4VAC50-20-180. Inspections.

A. The director may make inspections during construction, alteration or operation and maintenance as deemed necessary to ensure that the impounding structure is being constructed, altered or operated and maintained in compliance with the permit or certificate issued by the board. The director shall provide the owner a copy of the findings of these inspections. ~~This~~ The department's inspection does not relieve the owner from the responsibility of providing adequate inspection during construction, alteration, or operation and maintenance. During the maintenance, construction, or alteration of any [~~dam~~ impounding structure] or reservoir, the director shall require the owner to perform, at the owner's expense, such work or tests as necessary to obtain information sufficient to enable the director to determine whether conformity with the

plans and specifications approved by the certificate is being secured.

B. Periodic inspections during construction or alteration shall be conducted under the ~~supervision~~ direction of a licensed professional engineer who shall ~~propose~~ the frequency and nature of the inspections subject to approval by the director provide for [~~full-time~~] monitoring, review of contractor submittals, and appropriate confirmatory testing of all facets of construction affecting the safety of the impounding structure in accordance with the construction or alteration permit issued by the board.

Periodic C. Required inspections during operation and maintenance shall be conducted under the supervision of a licensed professional engineer at an interval not greater than that required to update the operation and maintenance certificate [-] At a minimum, an annual owner's inspection shall be conducted when a professional inspection is not required intervals designated under 4VAC50-20-105.

D. Every owner shall provide for an inspection by a licensed professional engineer after overtopping of the impounding structure or after flows cause damage to the emergency spillway. A copy of the findings of each inspection with the engineer's recommendations shall be filed with the board within a reasonable period of time not to exceed 30 days subsequent to completion of the inspection.

[4VAC50-20-190. Right to informal fact-finding proceeding or hearing.

Any owner aggrieved by an action taken by the director or by the board without hearing, or by inaction of the director or the board, under the provisions of this chapter, may demand in writing an informal fact-finding proceeding pursuant to §2.2-4019 of the Code of Virginia or a formal hearing pursuant to §2.2-4020 of the Code of Virginia. A formal hearing may be granted only with the consent of the board].

4VAC50-20-200. Enforcement.

Any owner refusing to obey any order of the board or the director pursuant to this chapter may be compelled to obey and comply with such provisions by injunction or other appropriate remedy obtained in a court proceeding. Such proceeding shall be instituted by the board or in the case of an emergency, by the director in the court which granted approval to the owner to impound waters or, if such approval has not been granted, the proceeding shall be instituted in any appropriate court. The provisions of this chapter may be enforced by the board, the director, or both in any manner consistent with the provisions of the Dam Safety Act (§10.1-604 et seq. of the Code of Virginia).

4VAC50-20-210. Consulting boards committee.

A. When the board needs to satisfy questions of safety regarding plans and specifications, construction, alteration, or operation and maintenance, or when requested by the owner,

the board may appoint a consulting ~~board committee~~ to report to it with respect to those questions of the impounding structure's safety of an impounding structure. Such a board committee shall consist of two or more consultants, none of whom have been associated with the impounding structure.

B. The costs and expenses incurred by the consulting ~~board committee~~, if appointed at the request of an owner, shall be paid by the owner.

C. The costs and expenses incurred by the consulting ~~board committee~~, if initiated by the board, shall be paid by the board.

4VAC50-20-220. Unsafe conditions.

A. No owner shall ~~have the right to maintain an unsafe impounding structure which unreasonably threatens the life or property of another person. The owner of any impounding structure found to have deficiencies which could threaten life or property if uncorrected shall take the corrective actions needed to remove such deficiencies within a reasonable period of time. Designation of an impounding structure as unsafe shall be made in accordance with §10.1-607.1 of the Code of Virginia.~~

B. Imminent danger.

1. If an owner or the owner's engineer has determined that circumstances are impacting the integrity of the impounding structure that could result in the imminent failure of the impounding structure, temporary repairs may be initiated prior to approval from the board. The owner shall notify the department within 24 hours of identifying the circumstances impacting the integrity of the impounding structure. Such emergency notification shall not relieve the owner of the need to obtain an alteration permit as soon as may be practicable, nor shall the owner take action beyond that necessary to address the emergency situation.

2. When the director finds that an impounding structure is unsafe and constitutes an imminent danger to life or property, he shall immediately notify the State Virginia Department of Emergency Management and confer with the owner who shall activate the Emergency Action Plan or Emergency Preparedness Plan if appropriate to do so. The owner of an impounding structure found to constitute an imminent danger to life or property shall take immediate corrective action to remove the imminent danger as required by §10.1-608 of the Code of Virginia.

C. Nonimminent danger. The owner of an impounding structure who has been issued ~~a report by the board containing~~ findings and recommendations, by the board, for the correction of deficiencies ~~which that may~~ threaten life or property if not corrected, shall undertake to implement the recommendations for correction of deficiencies according to a

schedule of implementation contained in that report as required by §10.1-609 of the Code of Virginia.

4VAC50-20-230. Complaints.

A. Upon receipt of a complaint alleging that the person or property of the complainant is endangered by the construction, alteration, maintenance or operation of an impounding structure, the director shall cause an inspection of the structure, unless the data, records and inspection reports on file with the board are found adequate to determine if the complaint is valid.

B. If the director finds that an unsafe condition exists, the director shall proceed under the provisions of §§10.1-608 and 10.1-609 of the Code of Virginia to render the extant condition safe.

Part V
Design Requirements

4VAC50-20-240. Design of structures.

A. The owner shall complete all necessary investigations prior to submitting the design report (Design Report for the Construction or Alteration of Virginia Regulated Impounding Structures). The design report shall contain those components outlined in 4VAC50-20-70 for construction activities or those outlined in 4VAC50-20-80 for alteration activities. The scope and degree of precision required is a matter of engineering judgment based on the complexities of the site and the hazard potential classification of the proposed structure.

B. Surveys shall be made with sufficient accuracy to locate the proposed construction site and to define the total volume of storage in the impoundment. Locations of center lines and other horizontal and vertical controls shall be shown on a map of the site. The area downstream and upstream from the proposed impounding structure shall be investigated in order to delineate the areas and extent of potential damage in case of failure or backwater due to flooding.

C. The drainage area shall be determined. Present, ~~projected and potential future~~ and planned land-use conditions shall be considered in determining the runoff characteristics of the drainage area. The most severe of these conditions shall be included in the design calculations which shall be submitted as part of the design report.

D. The geotechnical engineering investigation shall consist of borings, test pits and other subsurface explorations necessary to adequately define the existing conditions. The investigations shall be performed so as to appropriately define the soil, rock and ground water conditions.

E. All construction materials shall be adequately researched and selected so as to ensure that their ~~properties meet as constructed~~ behavior will reasonably conform to design criteria. If on-site materials are to be utilized, they shall be located and determined to be adequate in quantity and quality.

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4VAC50-20-250. Design flood. (Repealed.)

~~The minimum design flood to be utilized in impounding structure evaluation, design, construction, operation and maintenance shall be commensurate with the size and hazard potential of the particular impounding structure as determined in 4VAC50-20-50 and Table 1. Competent, experienced, professional engineering judgment shall be used in applying those design and evaluation procedures referenced in 4VAC50-20-320 of this chapter.~~

4VAC50-20-260. Emergency spillway Spillway design.

A. Every impounding structure shall have a spillway system with adequate capacity to discharge the design flood without endangering the safety of the impounding structure.

~~B. An emergency spillway shall be required.~~

~~B. Vegetated earth or an unlined emergency spillway may be approved when the applicant demonstrates that it will pass the spillway design flood without jeopardizing the safety of the impounding structure [(such as by allowance of overtopping of a structure not designed to permit overtopping)]. In no case shall [~~dam~~ impounding structure] owners permit the growth of trees and other woody vegetation in the emergency spillway area.~~

~~C. Lined emergency spillways shall include design criteria calculations, plans and specifications for ~~open channel, drop, ogee and chute~~ suitable energy dissipators and for spillways that include crest control structures, chutes, walls, panel lining, sills, blocks, and miscellaneous details. All joints shall be reasonably water-tight and placed on a foundation capable of sustaining applied loads without undue deformation. Provision shall be made for handling ~~leakage from the channel or~~ under seepage and uplift pressures from the foundation which might adversely affect the structural integrity and structural stability of the impounding structure.~~

4VAC50-20-270. Principal spillways and outlet works.

A. It will be assumed that principal spillways and regulating outlets provided for special functions will operate to normal design discharge capabilities during the spillway design flood, provided appropriate analyses show:

1. That control gates and structures are suitably designed to operate reliably under maximum heads for durations likely to be involved and risks of blockage by debris are minimal;
2. That access roads and passages to gate regulating controls would be safely passable by operating personnel under spillway design flood conditions; and
3. That there are no ~~other~~ substantial reasons for concluding that outlets would not operate safely to ~~the~~ full design capacity during the spillway design flood.

B. If there are reasons to doubt that any of the above basic requirements might not be adequately met under spillway

design flood conditions, the "dependable" discharge capabilities of regulating outlets shall be assumed to be less than 100% of design ~~capabilities~~ capacities, generally as outlined in the following subsections C through G of this section.

C. Any limitations in safe operating heads, maximum velocities to be permitted through structures or approach channels, or other design limitations shall be observed in establishing "dependable" discharge rating curves to be used in routing the spillway design flood hydrograph through the reservoir.

D. If intakes to regulating outlets are likely to be exposed to ~~dangerous~~ significant quantities of floating ~~drift~~ debris, sediment depositions or ice hazards prior to or during major floods, the dependable discharge capability during the spillway design flood shall be assumed to be zero.

E. If access roads or structural passages to operating towers or controls are likely to be flooded or otherwise unusable during the spillway design flood, the dependable discharge capability of regulating outlets will be assumed to be zero for ~~those period~~ the periods of time during which such conditions might exist.

F. Any deficiencies in discharge performance likely to result from delays in the operation of gates before attendants could be reasonably expected to reach the control ~~for in~~ must be taken into account when estimating "dependable" discharge capabilities ~~to be assumed~~ assumptions in routing the spillway design flood through ~~reservoir~~ the impoundment. Reports on design studies shall indicate the allowances made for possible delays in initiating gate operations. Normally, for projects located in small basins, where critical spillway design flood inflows may occur within several hours after intense precipitation, outflows through any regulating outlets that must be opened after the flood begins shall be assumed to be zero for an appropriate period of time subsequent to the beginning of intense rainfall.

G. All gates, valves, conduits and concrete channel outlets shall be designed and constructed to prevent significant erosion or damage to the impounding structure or to the downstream outlet or channel.

4VAC50-20-280. Drain requirements.

All new impounding structures regardless of their hazard potential classification, shall include a device to permit draining of the impoundment within a reasonable period of time as determined by the owner's licensed professional engineer [~~, subject to approval by the director~~]. [Existing drains on impounding structures shall be kept operational. When practicable, existing impounding structures shall be retrofitted with devices to permit draining.]

4VAC50-20-290. Life of the impounding structure.

Components of the impounding structure, ~~the impoundment,~~ the outlet works, drain system and appurtenances shall be durable [and maintained] or replaced in keeping with the design and planned life of the impounding structure.

4VAC50-20-300. Additional design requirements.

A. Flood routings shall start at or above the elevation of the crest of the lowest ungated outlet. Freeboard determination and justification must be addressed by the owner's engineer.

B. All elements of the impounding structure ~~and impoundments~~ shall conform to sound engineering practice. Safety factors, design standards and design references that are used shall be included with the design report.

C. Inspection devices may be required by the director for use by inspectors, owners or the director in conducting inspections in the interest of structural integrity during and after completion of construction and during the life of the impounding structure.

4VAC50-20-310. Plans and specifications.

The plans and specifications for a proposed impounding structure required in 4VAC50-20-70 for construction activities and in 4VAC50-20-80 for alteration activities shall consist of a detailed engineering design report ~~that includes~~ (Design Report for the Construction or Alteration of Virginia Regulated Impounding Structures) and engineering drawings and specifications, with the following as a minimum:

1. The name of the project; the name of the owner; classification of the impounding structure as set forth in this chapter; designated access to the project and the location with respect to highways, roads, streams and existing impounding structures and impoundments that would affect or be affected by the proposed impounding structure.
2. Cross-sections, plans, profiles, logs of test borings, laboratory and in situ test data, drawings of principal and emergency spillways, impounding structures, outlet works, drain system and appurtenances, and other ~~additional drawings~~ project components in sufficient detail to indicate clearly the extent and complexity of the work to be performed.
3. Contract drawings should include, but not be limited to, foundation and abutment treatment, stream or river diversion, excavation and material fill processes, phased fill and compaction and drainage devices.
4. The erosion and sediment control plan, as approved by the local government, which minimizes soil erosion and sedimentation during all phases of construction or alteration.

~~3. The technical provisions~~ 5. Technical specifications, as may be required to describe the materials, performance, and methods of the construction and construction quality control for the project.

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

4VAC50-20-320. Acceptable design procedures and references.

To ensure consistency of approach, within the major engineering disciplines of hydrology, hydraulics, soils and foundations, structures, and general civil design, criteria and approaches from multiple sources shall not be mixed for developing the design of a given feature or facility without approval of the director. In all cases the owner's engineer shall identify the source of the criteria.

The following are acceptable as design procedures and references:

1. The design procedures, manuals and criteria used by the United States Army Corps of Engineers.
2. The design procedures, manuals and criteria used by the United States Department of Agriculture, Natural Resources Conservation Service.
3. The design procedures, manuals and criteria used by the United States Department of the Interior, Bureau of Reclamation.
4. The design procedures, manuals and criteria used by the United States Department of Commerce, National Weather Service.
5. The design procedures, manuals and criteria used by the United States Federal [~~Agency~~ Energy] Regulatory Commission.
- ~~5-6.~~ Other design procedures, manuals and criteria that are accepted as current, sound engineering practices, as approved by the director prior to the design of the impounding structure.

4VAC50-20-330. Other applicable dam safety references.

[A.] Manuals, guidance, and criteria used by the Federal Emergency Management Agency, including the following:

1. Federal Guidelines for Dam Safety: Emergency Action Planning for Dam Owners, U.S. Department of Homeland Security, Federal Emergency Management Agency, October 1998, Reprinted January 2004; FEMA 64 or as revised.
2. Federal Guidelines for Dam Safety: Selecting and Accommodating Inflow Design Floods for Dams, U.S. Department of Homeland Security, Federal Emergency

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Management Agency, October 1998, Reprinted April 2004; FEMA 94 or as revised.

[B. Manuals, guidance, and forms provided by the department. Such materials may be located on the department's website at: <http://www.dcr.virginia.gov>.]

Part VI Fees

4VAC50-20-340. Authority to establish fees.

Under §10.1-613.5 of the Code of Virginia, the board is authorized to establish and collect application fees for the administration of the dam safety program, administrative review, certifications, and the repair and maintenance of [~~dam~~ impounding structures]. The fees will be deposited into the Dam Safety, Flood Prevention and Protection Assistance Fund.

4VAC50-20-350. Fee submittal procedures.

A. [~~(Upon the effective date of these regulations.)~~ Effective September 26, 2008,] fees for all application submittals required pursuant to 4VAC50-20-370 through 4VAC50-20-390 are due prior to issuance of a certificate or permit. No application for an Operation and Maintenance Certificate or a Construction Permit will be acted upon by the board without full payment of the required fee per §10.1-613.5 of the Code of Virginia.

B. Fees shall be paid by check, draft or postal money order payable to the Treasurer of Virginia, or submitted electronically (if available), and must be in U.S. currency, except that agencies and institutions of the Commonwealth of Virginia may submit Interagency Transfers for the amount of the fee. All fees shall be sent to the following address (or submitted electronically, if available): Virginia Department of Conservation and Recreation, [~~Dam Safety Receipts Control, P.O. Box 10150~~ Division of Finance, Accounts Payable, 203 Governor Street, 4th Floor,] Richmond, Virginia [~~23240~~ 23219].

C. All fee payments shall be accompanied by the following information:

1. Applicant name, address and daytime phone number.
2. The name of the [~~dam~~ impounding structure], and the [~~dam~~ impounding structure] location.
3. The type of application or report submitted.
4. Whether the submittal is for a new permit or certificate issuance or permit or certificate reissuance.
5. The amount of fee submitted.
6. [~~Dam~~ Impounding structure] identification number, if applicable.

D. No permit fees remitted to the department shall be subject to refund except as credits provided for in 4VAC50-20-390 [~~D C~~].

4VAC50-20-360. Fee exemptions.

Impounding structures owned by Virginia Soil and Water Conservation Districts shall be exempt from all fees associated with [~~Part VI this part~~] in accordance with §10.1-613.5 of the Code of Virginia. There will be no fee assessed [for a low hazard impounding structure exempted from fees pursuant to 4VAC50-20-51 or] for the decommissioning of an impounding structure.

4VAC50-20-370. Construction Permit application fees.

A. Any application form submitted pursuant to 4VAC50-20-70 for permitting a proposed impounding structure construction after [~~the effective date of these regulations~~ September 26, 2008,] shall be accompanied by a payment as determined in subsection B of this section.

B. Fees shall be as follows:

1. \$2,500 for High or Significant Hazard Potential impounding structures.
2. \$1,000 for Low Hazard Potential impounding structures.

4VAC50-20-380. Regular Operation and Maintenance Certificate application fees.

A. Any application for a six-year Regular Operation and Maintenance Certificate after [~~the effective date of these regulations~~ September 26, 2008] , except as otherwise exempted, shall be accompanied by a payment as determined in subsection B of this section.

B. Fees for High, Significant, or Low Hazard Potential impounding structures shall be as follows:

1. [~~\$1,500~~ \$600] for High Hazard Potential.
2. [~~\$1,000~~ \$600] for Significant Hazard Potential.
3. [~~\$600~~ \$300] for Low Hazard Potential.

[C. Fees for extension of Regular Operation and Maintenance Certificates shall be \$250 per year or portion thereof.]

4VAC50-20-390. Conditional Operation and Maintenance Certificate application fee.

A. Fees for [issuance of] a Conditional Operation and Maintenance Certificate [~~or for the extension of a Conditional Operation and Maintenance Certificate for High or Significant Hazard Potential impounding structures~~] shall be as follows:

1. For a [~~2-year Certificate: \$1,000~~ certificate for more than one year but no more than two years: \$300.]

~~2. For a [1.5 year Certificate: \$750 certificate for one year or less: \$150.]~~

~~[3. For a 1 year Certificate: \$500~~

~~4. For a 6 month Certificate: \$250~~

~~B. Fees for a Conditional Operation and Maintenance Certificate or for the extension of a Conditional Operation and Maintenance Certificate for Low Hazard Potential impounding structures shall be as follows:~~

~~1. For a 2 year Certificate: \$500~~

~~2. For a 1.5 year Certificate: \$375~~

~~3. For a 1 year Certificate: \$250~~

~~4. For a 6 month Certificate: \$125~~

~~C. Fees for a Conditional Operation and Maintenance Certificate or for the extension of a Conditional Operation and Maintenance Certificate for any impounding structure that requires a modification in spillway capacity due to changes in the regulations and that is eligible for a delayed effective date pursuant to 4VAC50-20-125 shall be as follows:~~

~~1. For a 2 year Certificate: \$200~~

~~2. For a 1.5 year Certificate: \$150~~

~~3. For a 1 year Certificate: \$100~~

~~4. For a 6 month Certificate: \$50~~

~~B. The fee for an extension of a Conditional Operation and Maintenance Certificate shall be \$250 per year or portion thereof.]~~

~~[D. C.] The board may allow a partial credit towards the Regular Operation and Maintenance Certificate fee if the owner of the impounding structure has completed, to the director's satisfaction, the conditions of the Conditional Certificate prior to its expiration. [Credits shall only be provided to the nearest 6 month interval.]~~

4VAC50-20-400. Incremental Damage Analysis review fees.

~~[The fee for the review of an incremental damage analysis submitted pursuant to 4VAC50-20-52 shall be \$225. Re-review of an analysis determined to be incomplete or in error upon the department's prior review shall cost an additional \$45 per subsequent submittal.] Should the department determine that outside expertise to assist with the review [of an incremental damage analysis] is necessary, the applicant shall be responsible for the cost of such outside expertise. Such costs shall be agreed upon in advance by the [department and the] applicant.~~

FORMS (Repealed.)

~~Dam Owner's Annual Inspection Form, DCR 199-098 (rev. 12/01).~~

~~Operation and Maintenance Application Class I, II and III Impounding Structures, DCR 199-099 (rev. 12/01).~~

~~As Built Report for Class I, II and III Impounding Structures, DCR 199-100 (rev. 12/01).~~

~~Design Report for the Construction/Alteration of Impounding Structures, DCR 199-101 (rev. 12/01).~~

~~Emergency Action Plan for Class I, Class II and Class III Impounding Structures, DCR 199-103 (rev. 12/01).~~

~~Inventory Report for Class III and Class IV Impounding Structures, DCR 199-104 (rev. 12/01).~~

~~Reinspection Report for Class I and II Impounding Structures, DCR 199-105 (rev. 12/01).~~

~~Agricultural Certification for Impounding Structures, DCR 199-106 (rev. 12/01).~~

~~Transfer Application for Impounding Structures, DCR 199-107 (rev. 12/01).~~

VA.R. Doc. No. R06-130; Filed July 28, 2008; 12:02 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

STATE BOARD OF CORRECTIONS

Final Regulation

REGISTRAR'S NOTICE: The Board of Corrections is claiming an exemption from the Administrative Process Act pursuant to §2.2-4002 B 9 of the Code of Virginia, which exempts agency action relating to inmates of prisons or other such facilities or parolees therefrom and §2.2-4002 B 10 of the Code of Virginia, which exempts agency action relating to the custody of persons in, or sought to be placed in, mental, penal or other state institutions as well as the treatment, supervision, or discharge of such persons.

Title of Regulation: **6VAC15-31. Standards for State Correctional Facilities (amending 6VAC15-31-320).**

Statutory Authority: §53.1-5 of the Code of Virginia.

Effective Date: September 18, 2008.

Agency Contact: John Jabe, Deputy Director, Operations, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-3010, FAX (804) 674-3509, or email john.jabe@vadoc.virginia.gov.

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Summary:

This regulation requires Department of Corrections facilities to hold incoming and outgoing letters to inmates no more than 24 hours, excluding weekends and holidays. The current regulation allows no flexibility for staff shortage, extremely heavy mail flow or institutional emergencies. The amendment increases this time frame from 24 hours to 48 hours to address these issues.

6VAC15-31-320. Mail, telephone, and visiting.

Written procedure and practice shall govern the following:

1. Inmate correspondence.
 - a. Incoming mail. In accordance with §274.96 of United States Post Office Administrative Services Manual (ASM-13), revised July 1999, and department procedures, inmate general correspondence mail may be opened, searched and possibly read if the inmate consents in writing to receive mail at the institution. Without written consent by the inmate, the mail will be returned to the post office unopened.
 - b. Outgoing letters. Inmates may send letters to specified classes of persons and organizations, as designated in departmental procedures.
 - c. Incoming and outgoing letters. Incoming and outgoing letters shall be held for no more than 24 48 hours, excluding weekends and holidays.
2. Postage allowance. Provisions shall be made for indigent inmates to correspond by mail in order to maintain community ties.
3. Inmate access to publications.
4. Telephone privileges.
5. Visiting privileges. Procedures shall specify the time, screening, frequency, and number of visitors, as well as provisions for special visits.

VA.R. Doc. No. R08-1545; Filed July 30, 2008, 9:49 a.m.

Proposed Regulation

Title of Regulation: 6VAC15-80. Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities (amending 6VAC15-80-10; adding 6VAC15-80-211).

Statutory Authority: §§53.1-5 and 53.1-80 through 53.1-82 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on October 17, 2008.

Agency Contact: Brooks Ballard, Architectural & Engineering Services, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-3102, FAX (804) 674-3529, or email brooks.ballard@vadoc.virginia.gov.

Basis: Section 53.1-5 of the Code of Virginia establishes the general powers and duties of the Department of Corrections for the responsibility to promulgate regulations. The Board of Corrections is mandating a value management assessment of each project in order to reduce the costs of the projects. The value management assessment is a part of the required capital construction costs.

Purpose: The amendment will allow for local correctional facilities to receive value management assessment cost reimbursement, which is currently not provided for in 6VAC15-80.

Substance: There is an increasing dissatisfaction on the part of local governments about being required to expend funds on local and regional jail construction projects that the Commonwealth, to date, has not participated in financially. The amendment will allow local and regional correctional facilities to receive cost reimbursement, to define limits for required value management assessment studies that serve to keep construction costs lower while promoting quality, and efficient designs. Value management assessment will analyze a construction project's design including systems, products/materials used, quality, efficiency, functionality, long-term design, cost and operational needs beyond 10 years.

Issues: Value management assessment benefits the Commonwealth as well as localities in cost savings on these projects. The Board of Corrections has already had two formal requests for reimbursement from attorneys representing localities. Until the amendment to this regulation is in effect, the state cannot release the funds (which have already been mandated) to reimburse the localities.

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

Summary of the Proposed Amendments to Regulation. The Board of Corrections (Board) proposes to amend its regulations that govern state reimbursement to localities for the building of local or regional jails. Specifically, the Board proposes to reword several definitions and promulgate into regulation its current policy which requires, and set parameters for, value management assessments (VMA) as a part of the jail planning process.

Result of Analysis. There is insufficient data to weigh the magnitude of costs versus benefits for this proposed regulation. Costs and benefits are discussed below.

Estimated Economic Impact. Currently regulation does not address value management analysis (VMA)¹ but current

Board policy requires that VMA be performed during the planning phase of any jail building or renovation projects for which state reimbursement will be requested. A VMA currently must be performed at the end of the design development phase (when plans are 35-40% complete). In addition, for large projects in excess of 250 beds, a second VMA is recommended at the construction documents phase (when plans are 90-95% complete). The VMA must be done by a value management team (independent of the locality or authority building the jail) that is headed by a certified value specialist or certified value engineer. Board policy, and this proposed regulation, mandate that the VMA "shall involve a three to four day exercise at the design development phase or four to five days each at the design development and construction document phases" and also requires certain activities occur on certain days of the VMA. At a minimum, the VMA must include assessment of "(facility) systems, products/materials, quality, efficiency, functionality, long term design and operational needs and cost". The proposed regulation defines long term design and operational needs as those that arise beyond ten years. Localities (or regional authorities) must inform the appropriate staff within the Department of Corrections (DOC) at least three weeks (15 working days) before a VMA is to take place so that DOC can have a representative on-site for any formal presentation of results and recommendations.

The long-term benefits that may accrue to the state and localities (regional authorities) because of VMA will likely vary and will likely depend on how accurately long term (expected lifetime) costs are calculated. If the costs for various combinations of capital expenditures (building costs, equipment costs, etc) are compared over a long time span with proper discounting for expected future repair and/or replacement costs, then VMA is likely to save both the state and localities (regional authorities) money. If, on the other hand, present cost savings for cheaper building methods/materials/equipment are too heavily weighted and costs for repair/replacement that will likely be needed sooner are not given due consideration, then facilities will end up costing more. Project budget constraints, and a project horizon that defines anything after ten years as long term, may lead VMA teams to make recommendations that save money during construction but that end up increasing costs over the usable life of a jail. An example of this type of total cost increase has been reported at Greensville Correctional Center. Greensville opened in 1990 and, because of budget constraints, was built with a cheaper roof (with a 15 year rather than a 30 year warranty) than best practices would have otherwise dictated. The roof lasted fifteen years but has now warped and will need to be replaced.

DOC reports that a one stage (three to four day) VMA costs between \$35,000 and \$60,000; a two stage VMA, where the VMA team works a total of eight to ten days would cost more. Requiring VMA will provide a net benefit for the

paying entities if cost savings that accrue on account of VMA are greater than these VMA fees. Any savings that are realized would likely be apportioned according to the state reimbursement guidelines which allow reimbursement of 25% of the capital costs of building local jails and 50% of the capital costs of building regional jails.

As described above, this proposed regulation lays out, in a very detailed way, how VMA must be done. This regulation might be improved if the Board had a performance goal instead of this prescriptive language as this would allow regulated entities to find the least expensive, least time consuming method to accomplish the same ends.

Businesses and Entities Affected. This proposed regulatory action will affect all localities and regional authorities that have recently built, or will build, jail facilities. DOC reports that there are seven already approved jail projects, and five projects for which localities are seeking approval, which would be immediately affected by this proposed action.

Localities Particularly Affected. Localities that have recently built, or plan on building, jail facilities will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. Because VMA is already required by Board policy, 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. This regulatory action sets rules for governmental entities rather than private interests. Accordingly, 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 some affect on real estate development costs for jails in the Commonwealth. If the benefits of VMA outweigh the costs, real estate development costs will decrease. If, on the other hand, the costs of VMA outweigh the benefits, real estate development costs will increase.

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

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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 Value management analysis is an assessment of building methods, materials and equipment for a project. The aim of this analysis is to find the least costly way to build and maintain the facility being analysed.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The economic impact analysis for 6VAC15-80 has been reviewed by the representatives of the Department of Corrections on behalf of the Board of Corrections. The agency believes that the analysis is thorough and appropriately covers any and all predictable circumstances involving this proposed change in regulation. The agency is in agreement with the Department of Planning and Budget's (DPB) analysis.

Summary:

The proposed amendment allows local and regional correctional facilities to receive cost reimbursement, to define limits for required value management assessment studies that serve to keep construction costs lower while promoting quality and efficient designs. The value management assessment will analyze a project design including systems, products/materials used, quality, efficiency, functionality, long-term design, and operational needs beyond 10 years and cost.

Part I
Introduction

Article 1
Definitions

6VAC15-80-10. Definitions.

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

"Acceptable" means those applicable standards or practices with which a registered professional architect, engineer or other duly licensed or recognized authority must comply.

"ADA" means Americans with Disabilities Act.

"Administrative area" means an area of the jail dedicated to maintaining the operation of the jail facility.

"Approved type" means an item approved by the reviewing authority.

"Artificial light" means light other than natural light.

"A.S.T.M." means the American Society for Testing and Materials.

"Board" means the State Board of Corrections.

"Board standards" means Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities, and Minimum Standards for Local Jails and Lockups.

"Building code" means the current edition of the Virginia Uniform Statewide Building Code and the Virginia Statewide Fire Prevention Code.

"Capacity or design capacity" means the maximum number of general population and community custody beds for which the facility is designed and constructed based on the space requirements in these standards.

"CCTV" means closed circuit television.

"Cell" means a space the size of which is specified in these standards enclosed by secure construction containing plumbing fixtures and usually a bunk in which an inmate is detained or sleeps. Cells can be single or multiple occupancy depending upon custody level.

"Central intake unit (CIU)" means an area constructed to provide, at a minimum, space for intake, temporary holding, booking, court and juvenile (if approved for juveniles) holding, classification and release functions.

"Central control point" means the principal secure space of the entire facility in which is located the equipment and control for the safety and security of the jail through electronic equipment for surveillance, communication, fire and smoke detection, emergency functions, regulation of entrance to jail through the security perimeter and regulation of ingress and egress to cells, dayrooms, corridors and other spaces within the jail.

"Chief jailer or chief correctional officer" means that individual who is in charge of the day to day security operation of the jail within the secure perimeter.

"Chief of Operations" means the Chief of Operations for Support, Division of Community Corrections, Department of Corrections.

"Classification cell" means a cell for short term holding of inmates for purposes of classification after booking and prior to being assigned to general population or other housing.

"Climate control" means temperature appropriate to the summer and winter comfort zones.

"Community-based corrections plan" means an evaluation of trends and factors at the local or regional level affecting current and future facility needs, and the assessment of resources available to meet such needs which is used as the basis for a request for reimbursement of local correctional facility construction costs.

"Community custody" means inmates incarcerated by the judicial system and classified for involvement in local work forces; participating in work, education, and rehabilitation release; and weekend and non-consecutive sentencing.

"Contact visiting" means a space where inmate and visitor at a minimum can pass papers to one another.

"Control room or station" means a space enclosed by interior security walls, roof and floor from which a jail officer may supervise inmates and control systems in a portion of the jail, such as locks, doors, etc. from that secure location.

"Dayroom" means a secure area contiguous to an inmate sleeping (cells, rooms) area, with controlled access from the inmate sleeping area, to which inmates may be admitted for daytime activities such as dining, bathing, and selected recreation or exercise.

"Department" means the Department of Corrections.

"Direct supervision" means a specific style of management where supervisory officers intermingle with inmates in housing units rather than observing inmate activity from within secure control points. Also, within this concept, services are generally brought to the inmate rather than taking the inmate to the service.

"Dormitory" means an area designed for accommodating five or more inmates and used to house minimum custody and community custody inmates.

"Enlargement or expansion" means to add an area of new construction to an existing local correctional facility by constructing additional area or areas.

"Facility" means a jail or lockup including all associated buildings and site.

"Federal population" means prisoners being held for any federal authority in a local facility.

"General population housing" means maximum, medium, minimum and community custody housing. General population excludes special purpose cells and central intake.

"Housing unit" means a group of cells with a common dayroom.

"IMC" means intermediate metal conduit.

"Inmate housing area" means a single person cell, multi-occupancy cell, room, or group of such cells with a common dayroom (housing unit) or dormitories which provide accommodations for sleeping, approved personal effects, and personal hygiene.

"Interior security walls" means walls within but not a part of a security perimeter which are utilized to restrict movement within the secure area, including but not limited to housing units, dormitories, corridors, inmate activity areas, intake areas, and program areas.

"Life safety operations" means the function of certain electrical, mechanical and other building equipment provided for the purpose of ensuring the safety of building occupants in the case of an emergency situation.

"Light" see artificial light.

"Local correctional facility" means any jail, jail farm, or other place used for the detention or incarceration of adult offenders, excluding a lockup, which is owned, maintained, or operated by any political subdivision or combination of political subdivisions of the Commonwealth.

"Local governing body" means a governing body as defined in §53.1-95.3 of the Code of Virginia.

"Lockup" means a facility, separate from a jail facility, operated by or for a local government for detention of persons for a short period of time.

"Maximum custody inmates" means persons who cannot be allowed to mingle physically with other inmates without close supervision, normally because of assaultive and aggressive behavior or high escape risk.

"Medium custody inmates" means those persons who require a moderate level of staff supervision and secure accommodations against escape, but who can be allowed to participate in group activities.

"Minimum custody inmates" means those inmates classified as not dangerous or likely to escape, but are of sufficient concern to require a minimum level of supervision.

"Minor renovation project" means renovation project which does not increase beds and has an estimated cost less than \$200,000.

"Natural light" means daylight which must be from a direct source within the living unit.

"New construction" means to build or replace a local correctional facility.

"Office of the deputy director" means the Deputy Director, Division of Community Corrections, Department of Corrections, or his designee.

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"Operating capacity" means capacity of the facility as established by the Department of Corrections.

"Overcrowding" means a facility having operated at greater than 25% over the operational capacity for at least one year exclusive of the federal prisoner population.

"Owner" means the representative from the locality or jail authority responsible for making decisions about the project.

"Owner's agent" means the persons or firm designated by a locality or jail authority to make decisions about the project.

"Per inmate or per bed" means for each general population bed.

"Regional jail" means, for purposes of state reimbursement for construction costs, those jails which meet the criteria set forth in §§53.1-81, 53.1-82 and 53.1-95.2 of the Code of Virginia, and jail having at least three member localities that was created (created means localities having submitted resolutions of local governing bodies or cooperative agreements) before February 1, 1993, or any jail construction project recommended for approval by the Board of Corrections as a regional jail prior to February 1, 1993.

"Renovation" means the alteration or other modification of an existing local correctional facility or piece of equipment for the purpose of modernizing or changing the use or capability of such local correctional facility or equipment.

Renovation does not include work on, repair or replacement of any part of an existing local correctional facility or equipment, which may be generally associated with normal wear and tear and included in routine maintenance. Renovation renders the facility, item or area in compliance with current board standards and superior to the original.

"Repair" means the correction of deficiencies in a local correctional facility or equipment which have either been damaged or worn by use, but which can be economically returned to service without replacement.

"Replacement" means the construction of a local correctional facility in place of a like local correctional facility or the purchasing of like equipment to replace equipment which has been so damaged or outlived its useful life that it cannot be economically renovated or repaired.

~~"Reviewing authority" means the department, division or agency to which the Governor has delegated authority to act in his behalf in reviewing local correctional facility construction cost estimates, plans, specifications and construction and recommends reimbursement approval. The current reviewing authority is the Department of Corrections Division of Planning and Engineering Services a representative or representatives of the Department of Corrections or the Department of Criminal Justice Services responsible for reviewing required documents, attending~~

required meetings, and interpreting and determining compliance with 6VAC15-80.

"Room" means a cell without plumbing fixtures. Rooms are utilized when inmates have control of the individual room doors and are free to circulate from rooms to dayrooms at will.

"Routine maintenance" means the normal and usual type of repair or replacement necessary as the result of periodic maintenance inspections or normal wear and tear of a local correctional facility or equipment.

"Sally port" means a safety vestibule as a defined space that promotes security by the use of two or more interlocking doors.

"Secure" (as relates to construction) means that the walls, floors, and ceilings or roofs are constructed in accordance with the secure construction portion of these standards.

"Secure area" means all spaces of the facility which are regularly occupied by inmates, including but not limited to cells, housing units, dormitories, corridors, inmate activity areas, intake areas, counseling or treatment areas, and program areas. (See security perimeter.)

"Secure custody" means maximum, medium and minimum security levels of housing located within the perimeter of a secure building or facility.

"Secure housing" means housing for all inmates (maximum, medium and minimum) which is not classified as community custody.

"Security perimeter" means the outer limits of a jail or lockup proper where walls, floor, roof and ceiling are used to prevent egress by inmates or ingress by unauthorized persons or contraband.

"Special purpose cells" means cells within the security perimeter which may include isolation, segregation, medical, protective custody or other special use cells.

"Standards" means the Board of Corrections' Standards for Planning, Design Construction and Reimbursement of Local Correctional Facilities.

"State responsible felon population" means those with greater than two- year felony sentences in accordance with §53.1-20 of the Code of Virginia.

"Stationary equipment" means built-in equipment or fixtures normally included in a structure at the time of construction.

"Supervision" means the act or process of performing watchful responsible care over inmates. Supervision, which ensures the safety of jail officers, requires more than casual observation or surveillance. It is an active process.

"Temporary holding cell or area" means a cell or group of cells used to hold one or more persons not to exceed 72

hours, while awaiting processing, booking, court appearance, classification or discharge, or a cell used to temporarily hold one or more persons until they can be moved to another facility or the general housing areas after booking. Cells holding more than one person are frequently referred to as group holding.

"Value management analysis (VMA)" means an analysis of facility design and construction for the purpose of satisfying required function, cost efficiency, while providing the greatest quality and efficiency for the project.

"Value management team" means a team of people, independent from the owner or the architect/engineer under contract to the owner, headed by a certified value specialist (CVS) or certified value engineer (CVE) with a combination of the following disciplines based on phase and nature of the project: _____ architecture, _____ engineering (civil/site/mechanical/electrical) security and cost estimating.

"Vehicular sally port" means a drive-in or drive-through made secure preferably by remotely controlled electrically operated interlocking doors for entrance and exit. It is normally located in close proximity to the facility intake area.

"Ventilation" means providing, at minimum, movement of air within the facility in accordance with requirements of the building code.

6VAC15-80-211. Value management analysis.

A. All jail projects for which reimbursement is being requested for new construction, expansion or renovation shall have a value management analysis (VMA) performed during design. For renovation projects, a waiver may be requested from the board.

B. VMA shall be performed a the conclusion of the design development (35%-40% complete) phases of the project. For large projects (in excess of 250 beds), it is recommended that a second phase of VMA be performed at the construction documents phase (90%-95% complete).

C. The VMA shall involve a three- to four-day exercise at the design development phase, or four to five days each at the design development and construction document phases. The first day, or portion thereof, of each analysis consists of a presentation overview by the owner and the A/E design team to the value management team. The final day or portion thereof, consists of a presentation of findings and recommendations by the value management team to the owner and A/E design team and attended by the reviewing authority.

D. The VMA process shall analyze at a minimum the following aspects of the project's design: systems, products/materials, quality, efficiency, functionality, long-term design and operational needs (beyond 10 years) and cost.

E. The owner shall engage the services of a qualified value management team, as defined in the definitions and headed by a certified value specialist (or engineer) pursuant to the definitions. The VMA team shall be independent of the A/E design team. Cost estimators are also recommended as beneficial to the analysis, particularly for projects performing VMA at the construction documents phase.

F. The owner shall advise the reviewing authority in writing at least 15 working days in advance of the meeting dates for the VMA. A representative of the reviewing authority shall meet with the value management team at the formal presentation of results to the owner and A/E design team.

G. Upon completion of the VMA process, a summary report detailing VMA recommendations and the owner's decision on implementation of the recommendations shall be provided in writing to the reviewing authority.

VA.R. Doc. No. R08-865; Filed July 30, 2008, 9:50 a.m.

DEPARTMENT (BOARD) OF JUVENILE JUSTICE

Final Regulation

REGISTRAR'S NOTICE: The following model public participations are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

Titles of Regulations: 6VAC35-10. Public Participation Guidelines (repealing 6VAC35-10-10 through 6VAC35-10-150).

6VAC35-11. Public Participation Guidelines (adding 6VAC35-11-10 through 6VAC35-11-110).

Statutory Authority: §§2.2-4007.02 and 66-10 of the Code of Virginia.

Effective Date: September 17, 2008.

Agency Contact: Deron Phipps, Regulatory Coordinator, Department of Juvenile Justice, 700 Centre, 700 E. Franklin St., 4th Floor, Richmond, VA 23219, telephone (804) 746-6407, FAX (804) 371-0773, or email deron.phipps@djj.virginia.gov.

Summary:

The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.

This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of

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the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) proving that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.

CHAPTER 11 PUBLIC PARTICIPATION GUIDELINES

Part I Purpose and Definitions

6VAC35-11-10. Purpose.

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

6VAC35-11-20. Definitions.

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

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

"Agency" means the Department (Board) of Juvenile Justice, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

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

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

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

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

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

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

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

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

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

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

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

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

Part II Notification of Interested Persons

6VAC35-11-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

6VAC35-11-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 6VAC35-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.
3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III

Public Participation Procedures

6VAC35-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.
2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).
2. For a minimum of 60 calendar days following the publication of a proposed regulation.
3. For a minimum of 30 calendar days following the publication of a repropoed regulation.
4. For a minimum of 30 calendar days following the publication of a final adopted regulation.
5. For a minimum of 30 calendar days following the publication of a fast-track regulation.
6. For a minimum of 21 calendar days following the publication of a notice of periodic review.
7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

6VAC35-11-60. Petition for rulemaking.

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;
2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and
3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

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D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

6VAC35-11-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

6VAC35-11-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or
3. The agency determines that resolution of a controversy is unlikely.

6VAC35-11-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

6VAC35-11-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;
2. The Governor directs the agency to hold a public hearing; or
3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

6VAC35-11-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and
2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R08-1436; Filed July 30, 2008, 8:51 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Department (Board) of Juvenile Justice 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 (Board) of Juvenile Justice will receive, consider and respond

to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **6VAC35-51. Standards for Interdepartmental Regulation of Children's Residential Facilities (adding 6VAC35-51-10 through 6VAC35-51-1100).**

Statutory Authority: §§16.1-309.9, 66-10, and 66-24 of the Code of Virginia.

Effective Date: September 17, 2008.

Agency Contact: Deron Phipps, Regulatory Coordinator, Department of Juvenile Justice, 700 Centre, 700 E. Franklin St., 4th Floor, Richmond, VA 23219, telephone (804) 746-6407, FAX (804) 371-0773, or email deron.phipps@djj.virginia.gov.

Summary:

This new regulation incorporates the provisions of the current Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-11) in their entirety, with the exception of the requirement for interdepartmental cooperation in the development and promulgation of regulations governing children's residential facilities that, effective July 1, 2008, were removed from the governing statutes and two provisions from which the Department of Juvenile Justice is specifically excluded. Additionally, technical changes have been made to the new regulation for ease of reading and consistency with the Form, Style, and Procedure Manual for Publication of Virginia Regulations. The board has taken this action to comply with the mandates of Chapter 873 of the 2008 Acts of Assembly.

CHAPTER 51
STANDARDS FOR INTERIM REGULATION OF
CHILDREN'S RESIDENTIAL FACILITIES

6VAC35-51-10. Definitions.

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

"Allegation" means an accusation that a facility is operating without a license or receiving public funds for services it is not certified to provide.

"Annual" means within 13 months of the previous event or occurrence.

"Applicable state regulation" means any regulation that the promulgating state agency determines applies to the facility. The term includes, but is not necessarily limited to, modules, standards, and other regulations promulgated by the Departments of Education; Health; Housing and Community Development; Juvenile Justice; Mental Health, Mental

Retardation and Substance Abuse Services; Social Services; or other state agencies.

"Applicant" means the person, corporation, partnership, association, or public agency that has applied for a license or certificate.

"Aversive stimuli" means physical forces (e.g., sound, electricity, heat, cold, light, water, or noise) or substances (e.g., hot pepper, pepper sauce, or pepper spray) measurable in duration and intensity that when applied to a resident are noxious or painful to the individual, but in no case shall the term "aversive stimuli" include striking or hitting the individual with any part of the body or with an implement or pinching, pulling, or shaking the resident.

"Behavior support" means those principles and methods employed by a provider to help a child achieve positive behavior and to address and correct a child's inappropriate behavior in a constructive and safe manner in accordance with written policies and procedures governing program expectations, treatment goals, child and staff safety and security, and the child's service plan.

"Behavior support assessment" means identification of a resident's behavior triggers, successful intervention strategies, anger and anxiety management options for calming, techniques for self-management, and specific goals that address the targeted behaviors that lead to emergency safety interventions.

"Body cavity search" means any examination of a resident's rectal or vaginal cavities, except the performance of medical procedures by medical personnel.

"Case record" or "record" means up-to-date written or automated information relating to one resident. This information includes social data, agreements, all correspondence relating to care of the resident, service plans with periodic revisions, aftercare plans and discharge summary, and any other data related to the resident.

"Child" means any person legally defined as a child under state law. The term includes residents and other children coming in contact with the resident or facility (e.g., visitors). When the term is used, the requirement applies to every child at the facility regardless of whether the child has been admitted to the facility for care (e.g., staff/child ratios apply to all children present even though some may not be residents).

"Child-placing agency" means any person licensed to place children in foster homes or adoptive homes or a local board of social services authorized to place children in foster homes or adoptive homes.

"Children's residential facility" or "facility" means a publicly or privately operated facility, other than a private family home, where 24-hour per day care is provided to children

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separated from their legal guardians and is required to be licensed or certified by the Board of Juvenile Justice by the Code of Virginia.

"Complaint" means an accusation against a licensed or certified facility regarding an alleged violation of standards or law.

"Confined in postdispositional detention" means that a court has sentenced the juvenile to a detention home for a period exceeding 30 days as found in §16.1-284.1 B of the Code of Virginia.

"Contraband" means any item prohibited by law or by the rules and regulations of the agency, or any item that conflicts with the program or safety and security of the facility or individual residents.

"Corporal punishment" means punishment administered through the intentional inflicting of pain or discomfort to the body through actions such as, but not limited to (i) striking or hitting with any part of the body or with an implement; (ii) pinching, pulling, or shaking; or (iii) any similar action that normally inflicts pain or discomfort.

"Corrective action plan" means violations documented by the regulatory authority and the facility's submitted pledged corrective action to the documented violations cited by the regulatory authority.

"Day" means calendar day unless the context clearly indicates otherwise.

"Detention home" or "secure detention" means a local, regional, or state, publicly or privately operated secure custody facility that houses juveniles who are ordered detained pursuant to the Code of Virginia. The term does not include juvenile correctional centers.

"DJJ" means the Department of Juvenile Justice.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DOE" means the Department of Education.

"DSS" means the Department of Social Services.

"Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action. Emergency does not include regularly scheduled time off for permanent staff or other situations that should reasonably be anticipated.

"Emergency admission" means the sudden, unplanned, unexpected admittance of a child who needs immediate care except self-admittance to a temporary care facility or a court-ordered placement.

"Goal" means expected results or conditions that usually involve a long period of time and that are written in behavioral terms in a statement of relatively broad scope.

Goals provide guidance in establishing specific short-term objectives directed toward the attainment of the goal.

"Good character and reputation" means findings have been established, and knowledgeable and objective people agree that the individual maintains business or professional, family, and community relationships that are characterized by honesty, fairness, truthfulness, and dependability and has a history or pattern of behavior that demonstrates that the individual is suitable and able to care for, supervise, and protect children. Relatives by blood or marriage, and persons who are not knowledgeable of the individual, such as recent acquaintances, shall not be considered objective references.

"Group home" means a children's residential facility that is a community-based, home-like single dwelling, or its acceptable equivalent, other than the private home of the operator, and serves up to 12 residents.

"Health record" means the file maintained by a provider that contains personal health information.

"Human research" means any systematic investigation including research development, testing, and evaluation, utilizing human subjects, that is designed to develop or contribute to generalized knowledge. Human research shall not include research exempt from federal research regulations pursuant to 45 CFR 46.101(b).

"Immediately" means directly without delay.

"Independent living program" means a competency-based program that is specifically approved by the regulatory authority to provide the opportunity for the residents to develop the skills necessary to live successfully on their own following completion of the program.

"Individualized service plan" means a written plan of action developed, and modified at intervals, to meet the needs of a specific resident. It specifies measurable short- and long-term goals, objectives, strategies, time frames for reaching the goals, and the individuals responsible for carrying out the plan.

"Juvenile correctional center" means a secure custody facility operated by, or under contract with, DJJ to house and treat persons committed to the department.

"Legal guardian" means the natural or adoptive parents or other person, agency, or institution that has legal custody of a child.

"License or certificate" means a document verifying approval to operate a children's residential facility and that indicates the status of the facility regarding compliance with applicable state regulations.

"Live-in staff" means staff who are required to be on duty for a period of 24 consecutive hours or more during each work week.

"Living unit" means the space in which a particular group of children in care of a residential facility reside. A living unit contains sleeping areas, bath and toilet facilities, and a living room or its equivalent for use by the residents of the unit. Depending upon its design, a building may contain one living unit or several separate living units.

"Mechanical restraint" means the use of an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or portion of a person's body as a means to control his physical activities when the individual receiving services does not have the ability to remove the device.

"Medication error" means an error made in administering a medication to a resident including the following: (i) the wrong medication is given to a resident; (ii) the wrong resident is given the medication; (iii) the wrong dosage is given to a resident; (iv) medication is given to a resident at the wrong time or not at all; and (v) the proper method is not used to give the medication to a resident. A medication error does not include a resident's refusal of offered medication.

"Objective" means expected short-term results or conditions that must be met in order to attain a goal. Objectives are stated in measurable, behavioral terms and have a specified time for achievement.

"On duty" means that period of time during which a staff person is responsible for the supervision of one or more children.

"Parent" means a natural or adoptive parent or a surrogate parent appointed pursuant to DOE's regulations governing special education programs for students with disabilities. "Parent" means either parent unless the facility has been provided documentation that there is a legally binding instrument, a state law, or a court order governing such matters as divorce, separation, or custody, that provides to the contrary.

"Pat down" means a thorough external body search of a clothed resident.

"Personal health information" means the information that encompasses the universe of oral, written, or otherwise recorded information that is created or received by an entity relating to either an individual's physical or mental health or the provision of or payment for health care to an individual.

"Pharmacological restraint" means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when the individual's behavior places him or others at imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition.

"Physical restraint" (also referred to as a "manual hold") means use of a physical intervention or "hands-on" hold to

prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Placement" means an activity by any person that provides assistance to a parent or legal guardian in locating and effecting the movement of a child to a foster home, adoptive home, or children's residential facility.

"Premises" means the tracts of land on which any part of a residential facility for children is located and any buildings on such tracts of land.

"Provider," "licensee," or "sponsor" means the person, corporation, partnership, association, or public agency to whom a license or certificate is issued and who is legally responsible for compliance with the regulatory and statutory requirements relating to the facility.

"Regulatory authority or agency" means the department or state board that is responsible under the Code of Virginia for the licensure or certification of a children's residential facility. For facilities governed by these Standards for Interim Regulation of Children's Residential Facilities (interim standards), the regulatory authority is the Board of Juvenile Justice.

"Resident" means a person admitted to a children's residential facility for supervision, care, training, or treatment on a 24-hour per day basis.

"Respite care facility" means a facility that is specifically approved to provide short-term, periodic residential care to children accepted into its program in order to give the parents or legal guardians temporary relief from responsibility for their direct care.

"Rest day" means a period of not less than 24 consecutive hours during which a staff person has no responsibility to perform duties related to the facility.

"Routine admission" means the admittance of a child following evaluation of an application for admission and execution of a written placement agreement.

"Rules of conduct" means a listing of a facility's rules or regulations that is maintained to inform residents and others about behaviors that are not permitted and the consequences applied when the behaviors occur.

"Sanitizing agent" means any substance approved by the Environmental Protection Agency to destroy bacteria.

"Seclusion" means the involuntary placement of an individual alone in an area secured by a door that is locked or held shut by a staff person by physically blocking the door or by any other physical or verbal means so that the individual cannot leave it.

"Secure custody facility" means a detention home or a juvenile correctional center with physical barriers that regulate movement.

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"Self-admission" means the admittance of a child who seeks admission to a temporary care facility as permitted by Virginia statutory law without completing the requirements for "routine admission."

"Severe weather" means extreme environment or climate conditions that pose a threat to the health, safety, or welfare of residents.

"Standard" means a statement that describes in measurable terms a required minimum performance level. The term "standard" and the term "regulation" may be used interchangeably.

"Strategies" means a series of steps and methods used to meet goals and objectives.

"Strip search" means a visual inspection of the body of a resident when that resident's outer clothing or total clothing is removed and an inspection of the removed clothing. Strip searches are conducted for the detection of contraband.

"Structured program of care" means a comprehensive planned daily routine including appropriate supervision that meets the needs of each resident both individually and as a group.

"Student/intern" means an individual who simultaneously is affiliated with an educational institution and a residential facility. Every student/intern who is not an employee is either a volunteer or contractual service provider depending upon the relationship among the student/intern, educational institution, and facility.

"Substantial compliance" means that while there may be noncompliance with one or more standards that represents minimal risk, compliance clearly and obviously exists with most of the standards as a whole.

"Systemic deficiency" means violations documented by the regulatory authority that demonstrate defects in the overall operation of the facility or one or more of its components.

"Target population" means individuals with a similar, specified characteristic or disability.

"Temporary care facility" means a facility or an emergency shelter specifically approved to provide a range of services, as needed, on an individual basis not to exceed 90 days, except that this term does not include secure detention facilities.

"Temporary contract worker" means an individual who is not a direct salaried employee of the provider but is employed by a third party and is not a consistently scheduled staff member.

"Therapy" means provision of direct diagnostic, preventive, and treatment services where functioning is threatened or affected by social and psychological stress or health impairment.

"Time out" means the involuntary removal of a resident by a staff person from a source of reinforcement to a different open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Treatment" means individually planned, sound, and therapeutic interventions that are intended to improve or maintain functioning of an individual receiving services in those areas that show impairment as the result of mental disability, substance addiction, or physical impairment. In order to be considered sound and therapeutic, the treatment must conform to current acceptable professional practice.

"Variance" means temporary or permanent waiver of compliance with a standard or portion of a standard, or permission to meet the intent of the standard by a method other than that specified in the standard, when the regulatory authority, in its sole discretion, determines: (i) enforcement will create an undue hardship, and (ii) resident care will not be adversely affected.

"Volunteers" means any individual or group who of their own free will, and without any financial gain, provides goods and services to the program without compensation.

"Wilderness program" means a facility specifically approved to provide a primitive camping program with a nonpunitive environment and an experience curriculum for residents nine years of age and older who cannot presently function in home, school, or community. In lieu of or in addition to dormitories, cabins, or barracks for housing residents, primitive campsites are used to integrate learning, mentoring, and group process with real living needs and problems for which the resident can develop a sense of social responsibility and self-worth.

6VAC35-51-20. Interdepartmental cooperation.

This chapter replaces the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-11) for all children's residential facilities regulated by the Board of Juvenile Justice. The Standards for Interdepartmental Regulation of Children's Residential Facilities remain in effect, pursuant to the third enactment clause of Chapter 873 of the 2008 Acts of the General Assembly, for children's residential facilities regulated by the regulatory authority or agency for the Departments of Education, Mental Health, Mental Retardation and Substance Abuse Services, and Social Services until such time as each board adopts new regulations related thereto.

6VAC35-51-30. Applications.

A. Initial applications.

1. A completed application includes, but is not limited to, an initial application form; proposed working budget for the year showing projected revenue and expenses for the first year of operation and a balance sheet showing assets

and liabilities; evidence of financial resources or a line of credit sufficient to cover estimated operating expenses for 90 days unless the facility is operated by a state or local government agency, board, or commission; a description of the program; a proposed staffing/supervision plan including the staff information sheet; copies of all job descriptions; evidence of the applicant's authority to conduct business in Virginia; a copy of the floor plan with dimensions of rooms; a certificate of occupancy; current health inspection; evidence of consultation with state or local fire prevention authorities; a list of board members, if applicable; three references for the applicant; and, if required by the regulatory authority, references for three officers of the board if applicable. This information shall be submitted to and approved by the regulatory authority in order for the application to be considered complete.

2. All initial applications that are not complete within 12 months shall be closed.

3. Facilities operated by state or local government agencies, boards, and commissions shall submit evidence of sufficient funds to operate including a working budget showing appropriated revenue and projected expenses for the coming year.

4. Currently licensed providers shall demonstrate that they are operating in substantial compliance with applicable regulations before new facilities operated by the same provider will be licensed.

B. Renewal applications. A completed application for renewal of a facility's license or certificate shall be submitted within 30 days after being notified to submit a renewal application.

6VAC35-51-40. Investigation.

The regulatory authority will arrange and conduct an on-site inspection of the facility and a thorough review of the services and an investigation of the character, reputation, status, and responsibility of the applicant.

6VAC35-51-50. Review of facilities.

A. Representatives of the regulatory authority shall make announced and unannounced reviews during the effective dates of the license/certificate. The purpose of these reviews is to monitor compliance with applicable standards.

B. The regulatory authority shall notify relevant local governments and placing and funding agencies, including the Office of Comprehensive Services, of multiple health and safety or human rights violations in children's residential facilities when such violations result in the lowering of the license or certificate to provisional status.

6VAC35-51-60. Posting of information.

A. Information concerning the application for initial licensure of children's residential facilities shall be posted to the DJJ website by locality.

B. An accurate listing of all licensed or certified facilities including information on renewal, denial, or provisional licensure, services and identification of the regulatory authority shall be posted on the DJJ website by locality.

6VAC35-51-70. General requirements.

A. The provider shall demonstrate substantial compliance with these standards to demonstrate that its program and physical plant provide reasonably safe and adequate care while approved plans of action to correct findings of noncompliance are being implemented and there are no noncompliances that pose an immediate and direct danger to residents.

B. Corporations sponsoring residential facilities for children shall maintain their corporate status in accordance with Virginia law.

C. The provider shall comply with the terms of its license or certificate.

D. A license or certificate is not transferable and automatically expires when there is a change of ownership or sponsorship.

E. The current license or certificate shall be posted at all times in a place conspicuous to the public.

F. A license or certificate shall not be issued to a facility when noncompliance poses an immediate danger to the resident's life, health, or safety.

G. Intermediate sanctions authorized by statute may be imposed at the discretion of the regulatory authorities.

H. Each provider shall self-report within 10 days, to the regulatory authority, lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges against staff that may have been made relating to the health and safety or human rights of residents.

I. The provider shall comply with all other applicable federal, state, or local laws and regulations.

J. The provider's current policy and procedure manual shall be readily accessible to all staff.

K. The provider shall comply with its own policies and procedures.

6VAC35-51-80. Written corrective action plans.

A. Facilities regulated by DJJ shall comply with the Board of Juvenile Justice's certification regulations governing corrective action plans.

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B. If there is noncompliance with applicable standards during an initial or ongoing review or investigation, the regulatory authority shall issue a licensing report describing the noncompliance and requesting the provider to submit a corrective action plan.

C. The provider shall submit to the regulatory authority and implement a written corrective action plan for each standard for which the provider is found to be in noncompliance.

D. The corrective action plan shall include a:

1. Description of each corrective action to be taken and person responsible for implementation;
2. Date of completion for each action; and
3. Signature of the person responsible for oversight of the implementation of the pledged corrective action.

E. The provider shall submit the corrective action plan to the regulatory authority within 15 business days of the issuance of the licensing report. Extensions may be granted by the regulatory authority when requested prior to the due date, but extensions shall not exceed an additional 10 business days. An immediate corrective action shall be required if the regulatory authority determines that the violations pose a threat to the health, safety, or welfare of residents.

F. A corrective action plan shall be approved by the regulatory authority. The provider shall have an additional 10 business days to submit a revised corrective action plan after receiving a notice that the plan submitted has not been approved.

6VAC35-51-90. Licenses/certificates.

A. The Board of Juvenile Justice shall issue a certificate to each facility regulated by the board indicating the facility's certification status when the facility is in compliance with these interim standards, other applicable regulations issued by the board, and applicable statutes. The certificate shall be effective for the period specified by the board unless it is revoked or surrendered sooner.

B. The term of a facility's license or certificate may be modified at any time during the licensure or certification period based on a change in the facility's compliance with these standards and other applicable statutes and regulations.

6VAC35-51-100. Application fees.

A. There shall be a \$500 nonrefundable initial application fee. If the application is closed, denied, or withdrawn, all subsequent initial applications shall require another \$500 fee.

B. There shall be a \$100 nonrefundable renewal application fee.

C. A renewal fee shall not be charged to providers directly following the issuance of a conditional license.

D. The application fee shall not apply to state or locally owned, operated, or contracted facilities.

E. Application fees shall be used for the development and delivery of training for providers and staff of children's residential facilities and regulators of these facilities.

6VAC35-51-110. Modification.

A. The conditions of a license or certificate may be modified during the term of the license or certificate with respect to the capacity, residents' age range, facility location, gender, or changes in the services. Limited modifications may be approved during the conditional licensure or certification period.

B. The provider shall submit a written report of any contemplated changes in operation that would affect the terms of the license or certificate or the continuing eligibility for licensure or certification to the regulatory authority.

C. A change shall not be implemented prior to approval by the regulatory authority. The provider will be notified in writing within 60 days following receipt of the request as to whether the modification is approved or a new license or certificate is required.

6VAC35-51-120. Denial.

A. An application for licensure or certification may be denied when the applicant:

1. Violates any provision of applicable laws or regulations made pursuant to such laws;
2. Has a founded disposition of child abuse or neglect after the appeal process has been completed;
3. Has been convicted of a crime listed in §37.2-416 or 63.2-1726 of the Code of Virginia;
4. Has made false statements on the application or misrepresentation of facts in the application process;
5. Has not demonstrated good character and reputation as determined through references, background investigations, driving records, and other application materials; or
6. Has a history of adverse licensing actions or sanctions.

B. If denial of a license or certificate is recommended, the facility shall be notified in writing of the deficiencies, the proposed action, the right to appeal, and the appeal process.

6VAC35-51-130. Revocation.

A. A license or certificate may be revoked when the provider:

1. Violates any provision of applicable laws or regulations;
2. Engages in conduct or practices that are in violation of statutes related to abuse or neglect of children;

3. Deviates significantly from the program or services for which a license or certificate was issued without obtaining prior written approval from the regulatory authority or fails to correct such deviations within the specified time; or

4. Engages in a willful action or gross negligence that jeopardizes the care or protection of residents.

B. If revocation of a license or certificate is recommended, the facility shall be notified in writing of the deficiencies, the proposed action, the right to appeal, and the appeal process.

6VAC35-51-140. Summary suspension.

A. In conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist that pose an immediate and substantial threat to the health, safety, and welfare of the residents, the director of DJJ may issue an order of summary suspension of the license or certificate to operate a children's residential facility when he believes the operation of the facility should be suspended during the pendency of such proceeding.

B. Prior to the issuance of an order of summary suspension, the regulatory authority shall contact the Executive Secretary of the Supreme Court of Virginia to obtain the name of a hearing officer. The regulatory authority shall schedule the time, date, and location of the administrative hearing with the hearing officer.

C. The order of summary suspension shall take effect upon its issuance. It shall be delivered by personal service and certified mail, return receipt requested, to the address of record of the facility as soon as practicable. The order shall set forth:

1. The time, date, and location of the hearing;
2. The procedures for the hearing;
3. The hearing and appeal rights; and
4. Facts and evidence that formed the basis for the order of summary suspension.

D. The hearing shall take place within three business days of the issuance of the order of summary suspension.

E. The regulatory authority shall have the burden of proving in any summary suspension hearing that it had reasonable grounds to require the facility to cease operations during the pendency of the concurrent revocation, denial, or other proceeding.

F. The administrative hearing officer shall provide written findings and conclusions, together with a recommendation as to whether the license or certificate should be summarily suspended, to the director of DJJ within five business days of the hearing.

G. The director of DJJ shall issue a final order of summary suspension or make a determination that the summary

suspension is not warranted based on the facts presented and the recommendation of the hearing officer within seven business days of receiving the recommendation of the hearing officer.

H. The director of DJJ shall issue and serve on the children's residential facility or its designee by personal service or by certified mail, return receipt requested, either:

1. A final order of summary suspension including (i) the basis for accepting or rejecting the hearing officer's recommendations and (ii) notice that the children's residential facility may appeal the director of DJJ's decision to the appropriate circuit court no later than 10 days following issuance of the order; or
2. Notification that the summary suspension is not warranted by the facts and circumstances presented and that the order of summary suspension is rescinded.

I. The facility may appeal the director of DJJ's decision on the summary suspension to the appropriate circuit court no more than 10 days after issuance of the final order.

J. The outcome of concurrent revocation, denial, and other proceedings shall not be affected by the outcome of any hearing pertaining to the appropriateness of the order of summary suspension.

K. At the time of the issuance of the order of summary suspension, the regulatory authority shall contact the appropriate agencies to inform them of the action and the need to develop relocation plans for residents, and ensure that parents and guardians are informed of the pending action.

6VAC35-51-150. Variances.

A. Any request for a variance shall be submitted in writing to the regulatory authority and shall include a:

1. Justification why enforcement of the standard would create an undue hardship;
2. How the facility can comply with the intent of the standard; and
3. Justification why resident care would not be adversely affected if the variance was granted.

B. A variance shall not be implemented prior to approval of the regulatory authority.

6VAC35-51-160. Investigation of complaints and allegations.

The Departments of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services are responsible for complete and prompt investigation of all complaints and allegations made against providers for which they have regulatory authority, and for notification of the appropriate persons or agencies when removal of residents may be necessary. Suspected criminal

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violations shall be reported to the appropriate law-enforcement authority.

6VAC35-51-170. Governing body.

A. The provider shall clearly identify the corporation, association, partnership, individual, or public agency that is the licensee.

B. The provider shall clearly identify any governing board, body, entity, or person to whom it delegates the legal responsibilities and duties of the provider.

6VAC35-51-180. Responsibilities of the provider.

A. The provider shall appoint a qualified chief administrative officer to whom it delegates, in writing, the authority and responsibility for administrative direction of the facility.

B. The provider shall develop and implement a written decision-making plan that shall provide for a staff person with the qualifications of the chief administrative officer or program director to be designated to assume the temporary responsibility for the operation of the facility. Each plan shall include an organizational chart.

C. The provider shall develop a written statement of the objectives of the facility including a description of the target population and the programs to be offered.

D. The provider shall develop and implement written policies and procedures to monitor and evaluate service quality and effectiveness on a systematic and on-going basis. The provider shall implement improvements when indicated.

6VAC35-51-190. Fiscal accountability.

A. Facilities operated by corporations, unincorporated organizations or associations, individuals, or partnerships shall prepare at the end of each fiscal year:

1. An operating statement showing revenue and expenses for the fiscal year just ended;
2. A working budget showing projected revenue and expenses for the next fiscal year that gives evidence that there are sufficient funds to operate; and
3. A balance sheet showing assets and liabilities for the fiscal year just ended.

B. There shall be a system of financial recordkeeping that shows a separation of the facility's accounts from all other records.

C. The provider shall develop and implement written policies and procedures that address the day-to-day handling of facility funds to include:

1. Handling of deposits;
2. Writing of checks; and

3. Handling of petty cash.

6VAC35-51-200. Insurance.

A. The provider shall maintain liability insurance covering the premises and the facility's operations.

B. The provider shall provide documentation that all vehicles used to transport residents are insured, including vehicles owned by staff.

C. The members of the governing body and staff who have been authorized to handle the facility's or residents' funds shall be bonded or otherwise indemnified against employee dishonesty.

6VAC35-51-210. Fundraising.

The provider shall not use residents in its fundraising activities without written permission of the legal guardian and the permission of residents 14 years or older.

6VAC35-51-220. Weapons.

The provider shall develop and implement written policies and procedures governing the possession and use of firearms, pellet guns, air guns, and other weapons on the facility's premises and during facility-related activities. The policy shall provide that no firearms, pellet guns, air guns, or other weapons shall be permitted on the premises or at facility-sponsored activities unless the weapons are:

1. In the possession of licensed security personnel or law-enforcement officers;
2. Kept securely under lock and key; or
3. Used by a resident with the legal guardian's permission under the supervision of a responsible adult in accord with policies and procedures developed by the facility for the weapons' lawful and safe use.

6VAC35-51-230. Relationship to regulatory authority.

A. The provider shall submit or make available to the regulatory authority such reports and information as the regulatory authority may require to establish compliance with these interim standards and other applicable regulations and statutes.

B. The governing body or its official representative shall notify the regulatory authority within five working days of any change in administrative structure or newly hired chief administrative officer or program director.

6VAC35-51-240. Facilities serving persons over the age of 17 years.

Facilities that are approved to serve persons over the age of 17 years shall comply with these interim standards for all occupants regardless of age, except when it is determined by the regulatory authority that housing, programs, services, and

supervision for such persons are provided separately from those for the other residents.

6VAC35-51-250. Health information.

A. Health information required by this section shall be maintained for each staff member and for each individual who resides in a building occupied by residents, including each person who is not a staff member or resident of the facility. Health information is to be handled, maintained, and stored in a fashion that maintains confidentiality of the information at all times.

B. Tuberculosis evaluation.

1. At the time of hire or residency at the facility, each individual shall submit the results of a screening assessment documenting the absence of tuberculosis in a communicable form as evidenced by the completion of a form containing, at a minimum, the elements of a current screening form published by the Virginia Department of Health. The screening assessment shall be no older than 30 days.

2. Each individual shall annually submit the results of a screening assessment, documenting that the individual is free of tuberculosis in a communicable form as evidenced by the completion of a form containing, at a minimum, the elements of a current screening form published by the Virginia Department of Health.

C. Subsequent evaluations for tuberculosis.

1. An individual who comes in contact with a known case of infectious tuberculosis shall be screened as determined appropriate based on consultation with the local health department.

2. An individual who develops chronic respiratory symptoms of three weeks' duration shall be evaluated immediately for the presence of infectious tuberculosis.

D. An individual suspected of having infectious tuberculosis shall not be permitted to return to work or have contact with staff or residents until a physician has determined that the individual is free of infectious tuberculosis.

E. The provider shall report any active case of tuberculosis developed by a staff member or a resident to the local health department.

6VAC35-51-260. Physical or mental health of personnel.

A. The provider or the regulatory authority may require a report of examination by a licensed physician or mental health professional when there are indications that an individual's physical, mental, or emotional health may jeopardize the care of residents.

B. An individual who is determined by a licensed physician or mental health professional to show an indication of a

physical or mental condition that may jeopardize the safety of residents or that would prevent the performance of duties shall be removed immediately from contact with residents and food served to residents until the condition is cleared as evidenced by a signed statement from the physician or mental health professional.

6VAC35-51-270. Qualifications.

A. Standards establishing minimum position qualifications shall be applicable to all providers. In lieu of the minimum position qualifications contained in this chapter, providers subject to (i) the rules and regulations of the Virginia Department of Human Resource Management, or (ii) the rules and regulations of a local government personnel office may develop written minimum entry-level qualifications in accord with the rules and regulations of the supervising personnel authority.

B. A person who assumes or is designated to assume the responsibilities of a position or any combination of positions described in these interim standards after December 28, 2007, shall:

1. Meet the qualifications of the position or positions;
2. Fully comply with all applicable standards for each function; and
3. Demonstrate a working knowledge of the policies and procedures that are applicable to his specific position or positions.

C. When services or consultations are obtained on a contractual basis, they shall be provided by professionally qualified personnel.

6VAC35-51-280. Job descriptions.

A. There shall be a written job description for each position that, at a minimum, includes the:

1. Job title;
2. Duties and responsibilities of the incumbent;
3. Job title of the immediate supervisor; and
4. Minimum education, experience, knowledge, skills, and abilities required for entry-level performance of the job.

B. A copy of the job description shall be given to each person assigned to a position at the time of employment or assignment.

6VAC35-51-290. Written personnel policies and procedures.

A. The provider shall have and implement provider-approved written personnel policies and make its written personnel policies readily accessible to each staff member.

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B. The provider shall develop and implement written policies and procedures to assure that persons employed in or designated to assume the responsibilities of each position possess the education, experience, knowledge, skills, and abilities specified in the job description for the position.

6VAC35-51-300. Personnel records.

A. Separate, up-to-date written or automated personnel records shall be maintained for each employee, student/intern, volunteer, and contractual service provider for whom background investigations are required by Virginia statute. Content of personnel records of volunteers, students/interns, and contractual service providers may be limited to documentation of compliance with requirements of Virginia laws regarding child protective services and criminal history background investigations.

B. The records of each employee shall include:

1. A completed employment application form or other written material providing the individual's name, address, phone number, and social security number or other unique identifier;
2. Educational background and employment history;
3. Written references or notations of oral references;
4. Reports of required health examinations;
5. Annual performance evaluations;
6. Date of employment for each position held and separation;
7. Documentation of compliance with requirements of Virginia laws regarding child protective services and criminal history background investigations;
8. Documentation of educational degrees and of professional certification or licensure;
9. Documentation of all training required by these standards and any other training received by individual staff; and
10. A current job description.

C. Personnel records, including separate health records, shall be retained in their entirety for at least three years after separation from employment, contractual service, student/intern, or volunteer service.

6VAC35-51-310. Staff development.

A. Required initial training:

1. Within seven days following the begin date, each staff member responsible for supervision of children shall receive basic orientation to the facility's behavior intervention policies, procedures, and techniques regarding less restrictive interventions, timeout, and physical restraint.

2. Within 14 days following an individual's begin date, or before an individual is alone supervising children, the provider shall conduct emergency preparedness and response training that shall include:

- a. Alerting emergency personnel and sounding alarms;
- b. Implementing evacuation procedures, including evacuation of residents with special needs (i.e., deaf blind, nonambulatory);
- c. Using, maintaining, and operating emergency equipment;
- d. Accessing emergency information for residents including medical information; and
- e. Utilizing community support services.

3. Within 14 days following the begin date, new employees, employees transferring from other facilities operated by the same provider, relief staff, volunteers, and students/interns shall be given orientation and training regarding:

- a. The objectives of the facility;
- b. Practices of confidentiality;
- c. The decision-making plan;
- d. These interim standards including the prohibited actions as outlined in this regulation; and
- e. Other policies and procedures that are applicable to their positions, duties, and responsibilities.

4. Within 30 days following the begin date, all staff working with residents shall be enrolled in a standard first-aid class and in a cardiopulmonary resuscitation class facilitated by the American Red Cross or other recognized authority, unless the individual is currently certified in first aid and cardiopulmonary resuscitation.

5. Within 30 days following the begin date, all staff working with residents shall be trained in child abuse and neglect, mandatory reporting, maintaining appropriate professional relationships and interaction among staff and residents, and suicide prevention.

6. Within 30 days following the begin date, all staff shall be trained on the facility's policies and procedures regarding standard precautions.

7. Within 30 days following the begin date, all staff shall be trained on appropriate siting of children's residential facilities and good neighbor policies and community relations.

8. Before they can administer medication, all staff responsible for medication administration shall have successfully completed a medication training program

approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medications.

9. All staff shall be trained in any area of quality improvement as identified from the results of the quality improvement plan.

B. Required annual retraining:

1. All employees, contractors, students/interns, and volunteers shall complete an annual refresher emergency preparedness and response training that shall include:

a. Alerting emergency personnel and sounding alarms;

b. Implementing evacuation procedures, including evacuation of residents with special needs (i.e., deaf, blind, nonambulatory);

c. Using, maintaining, and operating emergency equipment;

d. Accessing emergency information for residents including medical information; and

e. Utilizing community support services.

2. All staff who administer medication shall complete annual refresher medication training.

3. All child care staff shall receive annual retraining on the provider's behavior intervention and timeout policies and procedures.

4. All staff working with residents shall receive annual retraining in child abuse and neglect, mandatory reporting, maintaining appropriate professional relationships and interaction among staff and residents, and suicide prevention.

5. All staff shall receive annual retraining on the provider's policies and procedures regarding standard precautions.

C. Each full-time staff person who works with residents shall complete an additional 15 hours of annual training applicable to their job duties.

D. Providers shall develop and implement written policies and procedures to ensure that part-time staff receive training applicable to their positions.

E. Training provided shall be comprehensive and based on the needs of the population served to ensure that staff have the competencies to perform their jobs.

6VAC35-51-320. Staff supervision.

The provider shall develop and implement written policies and procedures regarding the supervision of staff, volunteers, contractors, and students/interns. These policies and procedures shall include:

1. Type of supervision;

2. Frequency of supervision; and

3. How the supervision will be documented.

6VAC35-51-330. Applicant.

A. Each applicant shall provide documentation that he has been trained on appropriate siting of children's residential facilities and good neighbor policies and community relations.

B. The applicant shall be interviewed in person by the regulatory authority to determine the qualifications of the owner or operator as set out in these standards.

C. Should the applicant not be qualified to perform the duties of the chief administrative officer, the applicant shall hire an individual with the qualifications, as set out in these standards, to perform the duties of the chief administrative officer.

6VAC35-51-340. Chief administrative officer.

A. The chief administrative officer shall have the following responsibilities:

1. Responsibility for compliance with these interim standards and other applicable standards;

2. Responsibility for all personnel;

3. Responsibility for overseeing the facility operation in its entirety, including the approval of the design of the structured program of care and its implementation; and

4. Responsibility for the facility's financial integrity.

B. A chief administrative officer appointed after December 28, 2007, shall have at least:

1. A master's degree in social work, psychology, counseling, nursing, or administration and a combination of two years' professional experience working with children and in administration and supervision;

2. A baccalaureate degree in social work, psychology, counseling, nursing, or administration and three years of combined professional experience with children and in administration and supervisory experience;

3. A baccalaureate degree and a combination of four years' professional experience in a children's residential facility and in administration and supervision; or

4. For a program whose lead regulatory agency is the Department of Education, a master's degree in education and a combination of two years of professional experience working with children and in administration and supervision or a baccalaureate degree in education and a combination of three years professional experience with children and in administration and supervision may be accepted.

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C. Any applicant for the chief administrative officer position shall submit the following to demonstrate compliance with the qualifications required by this regulation for the chief administrative officer:

1. Official transcripts from the accredited college or university of attendance within 30 days of hire; and
2. Documentation of prior relevant experience.

6VAC35-51-350. Program director.

A. The facility's program shall be directed by one or more qualified persons.

B. Persons directing programs shall be responsible for the development and implementation of the programs and services offered by the facility, including overseeing assessments, service planning, staff scheduling, and supervision.

C. Persons directing programs of a facility licensed or certified to care for 13 or more residents shall be full-time, qualified staff members.

D. A person appointed after December 28, 2007, to direct programs shall have at least:

1. A master's degree in social work, psychology, counseling, or nursing and a combination of two years' professional experience with children in a children's residential facility and in administration or supervision;
2. A baccalaureate degree in social work, psychology, counseling, or nursing and a combination of three years' professional experience with children in a children's residential facility and in administration or supervision;
3. A baccalaureate degree and a combination of four years of professional experience with children in a children's residential facility and in administration or supervision;
4. A license or certificate issued by the Commonwealth of Virginia as a drug or alcoholism counselor/worker if the facility's purpose is to treat drug abuse or alcoholism; or
5. For a program whose lead regulatory agency is DOE, a master's degree in education and a combination of two years of professional experience with children in a children's residential facility and in administration or supervision, or a baccalaureate degree in education with an endorsement in at least one area of disability served by the program, and a combination of three years' professional experience working with children in a children's residential facility and in administration or supervision.

E. Any applicant for the program director position shall submit the following to demonstrate compliance with the qualifications required by this regulation for the program director:

1. Official transcripts from the accredited college or university of attendance within 30 days of hire; and
2. Documentation of prior relevant experience.

6VAC35-51-360. Case manager.

A. Case managers shall have the responsibility for:

1. Coordination of all services offered to each resident; and
2. Provision of case management services as required in 6VAC35-51-760 A.

B. Case managers shall have:

1. A master's degree in social work, psychology, or counseling;
2. A baccalaureate degree in social work or psychology with documented field work experience and must be supervised by the program director or other staff employed by the provider with the same qualifications as required by 6VAC35-51-350 D; or
3. A baccalaureate degree and three years of professional experience working with children.

6VAC35-51-370. Child care supervisor.

A. Child care supervisors shall have responsibility for the:

1. Development of the daily living program within each child care unit; and
2. Orientation, training, and supervision of direct care workers.

B. Child care supervisors shall have:

1. A baccalaureate degree in social work or psychology and two years of professional experience working with children, one year of which must have been in a residential facility for children;
2. A high school diploma or a General Education Development Certificate (G.E.D.) and a minimum of five years' professional experience working with children with at least two years in a residential facility for children; or
3. A combination of education and experience working with children as approved by the regulatory authority.

6VAC35-51-380. Child care staff.

A. The child care worker shall have responsibility for guidance and supervision of the children to whom he is assigned including:

1. Overseeing physical care;
2. Development of acceptable habits and attitudes;
3. Management of resident behavior; and
4. Helping to meet the goals and objectives of any required service plan.

B. A child care worker and a relief child care worker shall:

1. Have a baccalaureate degree in human services;
2. Have an associate's degree and three months' experience working with children; or
3. Be a high school graduate or have a General Education Development Certificate (G.E.D.) and have six months of experience working with children.

C. Child care staff with a high school diploma or G.E.D. with no experience working with children may not work alone, but may be employed as long as they are working directly with the chief administrative officer, program director, case manager, child care supervisor, or a child care worker with one or more years' professional experience working with children. This section does not apply to the juvenile correctional facilities where staff are trained in a comprehensive basic skills curriculum before beginning their child care duties.

D. An individual hired, promoted, demoted, or transferred to a child care worker's position after the effective date of these standards shall be at least 21 years old, except as provided in 6VAC35-51-270 A.

E. The provider shall not be dependent on temporary contract workers to provide resident care.

6VAC35-51-390. Relief staff.

Qualified relief staff shall be employed as necessary to meet the needs of the programs and services offered and to maintain a structured program of care in accordance with 6VAC35-51-780.

6VAC35-51-400. Volunteers and students/interns.

A. A facility that uses volunteers or students/interns shall develop and implement written policies and procedures governing their selection and use.

B. The facility shall not be dependent upon volunteers or students/interns to provide basic services.

C. Responsibilities of volunteers and students/interns shall be clearly defined in writing.

D. Volunteers and students/interns shall have qualifications appropriate to the services they render.

6VAC35-51-410. Support functions.

A. Child care workers and other staff responsible for child care may assume the duties of nonchild care personnel only when these duties do not interfere with their child care responsibilities.

B. Residents shall not be solely responsible for support functions, including but not necessarily limited to, food service, maintenance of building and grounds, and housekeeping.

6VAC35-51-420. Buildings, inspections, and building plans.

A. All buildings and building related-equipment shall be inspected and approved by the local building official. Approval shall be documented by a certificate of occupancy.

B. The facility shall document at the time of its original application evidence of consultation with state or local fire prevention authorities.

C. The facility shall document annually after the initial application that buildings and equipment are maintained in accordance with the Virginia Statewide Fire Prevention Code (13VAC5-51).

D. At the time of the original application and at least annually thereafter the buildings shall be inspected and approved by state or local health authorities, whose inspection and approval shall include:

1. General sanitation;
2. The sewage disposal system;
3. The water supply; and
4. Food service operations.

E. The buildings and physical environment shall provide adequate space and shall be of a design that is suitable to house the programs and services provided and meet specialized needs of the residents.

F. Building plans and specifications for new construction, change in use of existing buildings, and any structural modifications or additions to existing buildings shall be submitted to and approved by the regulatory authority and by other appropriate regulatory authorities.

G. Swimming pools shall be inspected annually by the state or local health authorities or by a swimming pool business.

6VAC35-51-430. Heating systems, ventilation, and cooling systems.

A. Heat shall be evenly distributed in all rooms occupied by the residents such that a temperature no less than 68°F is maintained, unless otherwise mandated by state or federal authorities.

B. Natural or mechanical ventilation to the outside shall be provided in all rooms used by residents.

C. Air conditioning or mechanical ventilating systems, such as electric fans, shall be provided in all rooms occupied by residents when the temperature in those rooms exceeds 80°F.

6VAC35-51-440. Lighting.

A. Artificial lighting shall be by electricity.

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B. All areas within buildings shall be lighted for safety, and the lighting shall be sufficient for the activities being performed.

C. Lighting in halls shall be adequate and shall be continuous at night.

D. Operable flashlights or battery-powered lanterns shall be available for each staff member on the premises between dusk and dawn to use in emergencies.

E. Outside entrances and parking areas shall be lighted for protection against injuries and intruders.

6VAC35-51-450. Plumbing.

A. Plumbing shall be maintained in good operational condition.

B. An adequate supply of hot and cold running water shall be available at all times.

C. Precautions shall be taken to prevent scalding from running water. Water temperatures should be maintained at 100°F - 120°F.

6VAC35-51-460. Toilet facilities.

A. There shall be at least one toilet, one hand basin, and one shower or bathtub in each living unit.

B. There shall be at least one bathroom equipped with a bathtub in each facility.

C. There shall be at least one toilet, one hand basin, and one shower or tub for every eight residents for facilities licensed before July 1, 1981.

D. There shall be one toilet, one hand basin, and one shower or tub for every four residents in any building constructed or structurally modified after July 1, 1981, except secure custody facilities. Facilities licensed after December 28, 2007, shall comply with the one-to-four ratio.

E. The maximum number of staff members on duty in the living unit shall be counted in determining the required number of toilets and hand basins when a separate bathroom is not provided for staff.

F. There shall be at least one mirror securely fastened to the wall at a height appropriate for use in each room where hand basins are located except in security rooms in hospitals and secure custody facilities.

6VAC35-51-470. Personal necessities.

A. An adequate supply of personal necessities shall be available to the residents at all times for purposes of personal hygiene and grooming.

B. Clean, individual washcloths and towels shall be in good repair and available once each week and more often if needed.

C. When residents are incontinent or not toilet trained:

1. Provision shall be made for sponging, diapering, or other similar care on a nonabsorbent changing surface that shall be cleaned with warm soapy water after each use.

2. A covered diaper pail, or its equivalent, with leak-proof disposable liners shall be used to dispose of diapers. If both cloth and disposable diapers are used, there shall be a diaper pail for each.

3. Adapter seats and toilet chairs shall be cleaned immediately after each use with appropriate cleaning materials.

4. Staff shall thoroughly wash their hands with warm, soapy water immediately after assisting a child or themselves with toileting.

5. Appropriate privacy, confidentiality, and dignity shall be maintained for residents during toileting and diapering.

6VAC35-51-480. Sleeping areas.

A. When residents are four years of age or older, boys and girls shall have separate sleeping areas.

B. No more than four children shall share a bedroom or sleeping area except as provided by other applicable state regulations governing juvenile correctional centers.

C. Children who use wheelchairs, crutches, canes, or other mechanical devices for assistance in walking shall be provided with a planned, personalized means of effective egress for use in emergencies.

D. Beds shall be at least three feet apart at the head, foot, and sides; and double-decker beds shall be at least five feet apart at the head, foot, and sides.

E. Sleeping quarters in facilities licensed by DSS prior to July 1, 1981, and facilities established, constructed or structurally modified after July 1, 1981, except for primitive campsites, shall have:

1. At least 80 square feet of floor area in a bedroom accommodating one person;

2. At least 60 square feet of floor area per person in rooms accommodating two or more persons; and

3. Ceilings with a primary height at least 7-1/2 feet in height exclusive of protrusions, duct work, or dormers.

F. Each child shall have a separate, clean, comfortable bed equipped with a clean mattress, clean pillow, clean blankets, clean bed linens, and, if needed, a clean waterproof mattress cover.

G. Bed linens shall be changed at least every seven days and more often if needed.

H. Mattresses shall be fire retardant as evidenced by documentation from the manufacturer except in buildings

equipped with an automated sprinkler system as required by the Virginia Uniform Statewide Building Code (13VAC5-63).

I. Cribs shall be provided for residents under two years of age.

J. Each resident shall be assigned drawer space and closet space, or the equivalent, which is accessible to the sleeping area for storage of clothing and personal belongings except in secure custody facilities.

K. The environment of sleeping areas shall be conducive to sleep and rest.

6VAC35-51-490. Smoking prohibition.

Smoking shall be prohibited in living areas and in areas where residents participate in programs.

6VAC35-51-500. Residents' privacy.

A. When bathrooms are not designated for individual use, except in secure custody facilities:

1. Each toilet shall be enclosed for privacy, and
2. Bathtubs and showers shall provide visual privacy for bathing by use of enclosures, curtains, or other appropriate means.

B. Windows in bathrooms, sleeping areas, and dressing areas shall provide for privacy.

C. Every sleeping area shall have a door that may be closed for privacy or quiet, and this door shall be readily opened in case of fire or other emergency. In secure custody facilities, the door may be equipped with an observation window.

D. Residents shall be provided privacy from routine sight supervision by staff members of the opposite gender while bathing, dressing, or conducting toileting activities. This section does not apply to medical personnel performing medical procedures, to staff providing assistance to infants, or to staff providing assistance to residents whose physical or mental disabilities dictate the need for assistance with these activities as justified in the resident's record.

E. Video and audio monitoring shall be permitted only with the approval of the regulatory agency and for facilities licensed by DMHMRSAS, the approval of the Office of Human Rights.

6VAC35-51-510. Living rooms and indoor recreation space.

A. Each living unit, except for secure custody, shall have a living room, or other area for informal use, for relaxation and entertainment. The furnishings shall provide a comfortable, home-like environment that is appropriate to the ages of the residents.

B. All facilities shall have indoor recreation space that contains indoor recreation materials appropriate to the ages and interests of the residents.

C. Facilities licensed or certified to care for 13 or more residents shall have indoor recreation space distinct from the living room. Recreation space is not required in every living unit.

6VAC35-51-520. Study space.

A. Facilities serving a school-age population shall provide study space. Study space may be assigned in areas used interchangeably for other purposes.

B. Study space shall be well-lighted, quiet, and equipped with tables or desks and chairs.

6VAC35-51-530. Kitchen and dining areas.

A. Meals shall be served in areas equipped with sturdy tables and benches or chairs that are size and age appropriate for the residents.

B. Adequate kitchen facilities and equipment shall be provided for preparation and serving of meals.

C. Walk-in refrigerators, freezers, and other enclosures shall be equipped to permit emergency exits.

6VAC35-51-540. Laundry areas.

Appropriate space and equipment in good repair shall be provided if laundry is done at the facility.

6VAC35-51-550. Storage.

Space shall be provided for safe storage of items such as first-aid equipment, household supplies, recreational equipment, luggage, out-of-season clothing, and other materials.

6VAC35-51-560. Staff quarters.

A. A separate, private bedroom shall be provided for staff and their families when a staff member is on duty for 24 consecutive hours or more.

B. A separate, private bathroom shall be provided for staff and their families when there are more than four persons in the living unit and the staff person is on duty for 24 consecutive hours or more.

C. Staff and members of their families shall not share bedrooms with residents.

6VAC35-51-570. Office space.

Space shall be provided for administrative activities including, as appropriate to the program, confidential conversations and provision for storage of records and materials.

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6VAC35-51-580. Buildings and grounds.

A. The facility's grounds shall be safe, properly maintained, and free of clutter and rubbish. The grounds include, but are not limited to, all areas where residents, staff, and visitors may reasonably be expected to have access, including roads, pavements, parking lots, open areas, stairways, railings, and potentially hazardous or dangerous areas.

B. The interior and exterior of all buildings shall be safe, properly maintained, clean, and in good working order. This includes, but is not limited to, required locks, mechanical devices, indoor and outdoor equipment, and furnishings.

C. Outdoor recreation space shall be available and appropriately equipped for the residents' use.

6VAC35-51-590. Equipment and furnishings.

A. All furnishings and equipment shall be safe, clean, and suitable to the ages and number of residents.

B. There shall be at least one continuously operable, nonpay telephone accessible to staff in each building in which children sleep or participate in programs.

6VAC35-51-600. Housekeeping and maintenance.

A. All buildings shall be well-ventilated and free of stale, musty, or foul odors.

B. Adequate provision shall be made for the collection and legal disposal of garbage and waste materials.

C. Buildings shall be kept free of flies, roaches, rats, and other vermin.

D. A sanitizing agent shall be used in the laundering of bed, bath, table, and kitchen linens.

6VAC35-51-610. Farm and domestic animals.

A. Horses and other animals maintained on the premises shall be quartered at a reasonable distance from sleeping, living, eating, and food preparation areas, as well as a safe distance from water supplies.

B. Animals maintained on the premises shall be tested, inoculated, and licensed as required by law.

C. The premises shall be kept free of stray domestic animals.

D. Pets shall be provided with clean quarters and adequate food and water.

6VAC35-51-620. Acceptance of children.

Children shall be accepted only by court order or by written placement agreement with legal guardians. This requirement does not apply to temporary care facilities when self-admission is made according to Virginia law.

6VAC35-51-630. Admission procedures.

A. The facility shall have written criteria for admission that shall include:

1. A description of the population to be served;
2. A description of the types of services offered;
3. Intake and admission procedures;
4. Exclusion criteria to define those behaviors or problems that the facility does not have the staff with experience or training to manage; and
5. Description of how educational services will be provided to the population being served.

B. The facility shall accept and serve only those children whose needs are compatible with the services provided through the facility unless a child's admission is ordered by a court of competent jurisdiction.

C. Acceptance of a child as eligible for respite care by a facility approved to provide residential respite care is considered admission to the facility. Each individual period of respite care is not considered a separate admission.

D. Each facility shall provide documentation showing proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's program description as defined by the facility's criteria of admission.

6VAC35-51-640. Maintenance of residents' records.

A. A separate written or automated case record shall be maintained for each resident. In addition, all correspondence and documents received by the facility relating to the care of that resident shall be maintained as part of the case record. A separate health record may be kept on each resident.

B. Each case record and health record shall be kept up to date and in a uniform manner.

C. The provider shall develop and implement written policies and procedures for management of all records, written and automated, that shall describe confidentiality, accessibility, security, and retention of records pertaining to residents, including:

1. Access, duplication, dissemination, and acquiring of information only to persons legally authorized according to federal and state laws;
2. Facilities using automated records shall address procedures that include:
 - a. How records are protected from unauthorized access;
 - b. How records are protected from unauthorized Internet access;

c. How records are protected from loss;

d. How records are protected from unauthorized alteration; and

e. How records are backed up;

3. Security measures to protect records from loss, unauthorized alteration, inadvertent or unauthorized access, disclosure of information, and transportation of records between service sites;

4. Designation of person responsible for records management; and

5. Disposition of records in the event the facility ceases to operate.

D. The policy shall specify what information is available to the resident.

E. Active and closed records shall be kept in areas that are accessible to authorized staff and protected from unauthorized access, fire, and flood.

1. When not in use written records shall be stored in a metal file cabinet or other metal compartment.

2. Facility staff shall assure the confidentiality of the residents' records by placing them in a locked cabinet or drawer or in a locked room when the staff member is not present.

F. Each resident's written case and health records shall be stored separately subsequent to the resident's discharge according to applicable statutes and regulations.

G. Written and automated records shall be retained in their entirety for a minimum of three years after the date of discharge unless otherwise specified by state or federal requirements.

H. The face sheet shall be retained permanently unless otherwise specified by state or federal requirements.

6VAC35-51-650. Interstate Compact on the Placement of Children.

A. Documentation of the prior approval of the administrator of the Virginia Interstate Compact on the Placement of Children, Virginia Department of Social Services, shall be retained in the record of each resident admitted from outside Virginia. The requirements of this section shall not apply to a facility providing documentation that the administrator of the Virginia Interstate Compact has determined the facility is statutorily exempt from the Compact's provisions.

B. Documentation that the provider has sent copies of all serious incident reports regarding any child placed through the Interstate Compact to the administrator of the Virginia Interstate Compact on the Placement of Children shall be kept in the resident's record.

C. No later than five days after a resident has been transferred to another facility operated by the same sponsor, the resident's record shall contain documentation that the administrator of the Virginia Interstate Compact on the Placement of Children was notified in writing of the resident's transfer.

D. No later than 10 days after discharge, the resident's record shall contain documentation that the administrator of the Virginia Interstate Compact on the Placement of Children was notified in writing of the discharge.

E. The provider shall not discharge or send out-of-state youth in the custody of out-of-state social services agencies and courts to reside with a parent, relative, or other individual who lives in Virginia without the approval of the administrator of the Virginia Interstate Compact on the Placement of Children.

6VAC35-51-660. Participation of residents in human research.

The provider shall:

1. Implement a written policy stating that residents will not be used as subjects of human research; or

2. Document approval, as required by the regulatory authorities, for each research project using residents as subjects of human research, unless such research is exempt from review.

6VAC35-51-670. Emergency and self-admissions.

Providers accepting emergency or self-admissions shall:

1. Develop and implement written policies and procedures governing such admissions that shall include procedures to make and document prompt efforts to obtain (i) a written placement agreement signed by the legal guardian, or (ii) the order of a court of competent jurisdiction;

2. Place in each resident's record the order of a court of competent jurisdiction, a written request for care, documentation of an oral request for care, and justification of why the resident is to be admitted on an emergency basis; and

3. Clearly document in written assessment information gathered for the emergency admission that the individual meets the facility's criteria for admission.

6VAC35-51-680. Application for admission.

A. Admission shall be based on evaluation of an application for admission. The requirements of this section do not apply to court-ordered placements or transfer of a resident between residential facilities located in Virginia and operated by the same sponsor.

Regulations

B. Providers shall develop, and fully complete prior to acceptance for care, an application for admission that is designed to compile information necessary to determine:

1. The educational needs of the prospective resident;
2. The mental health, emotional, and psychological needs of the prospective resident;
3. The physical health needs, including the immunization needs, of the prospective resident;
4. The protection needs of the prospective resident;
5. The suitability of the prospective resident's admission;
6. The behavior support needs of the prospective resident; and
7. Information necessary to develop a service plan and a behavior support plan.

C. The resident's record shall contain a completed application for admission at the time of a routine admission or within 30 days after an emergency admission.

D. Each facility shall develop and implement written policies and procedures to assess each prospective resident as part of the application process to ensure that:

1. The needs of the prospective resident can be addressed by the facility's services;
2. The facility's staff are trained to meet the prospective resident's needs; and
3. The admission of the prospective resident would not pose any significant risk to (i) the prospective resident, or (ii) the facility's residents or staff.

6VAC35-51-690. Written placement agreement.

A. The facility, except a facility that accepts admission only upon receipt of the order of a court of competent jurisdiction, shall develop a written placement agreement that:

1. Authorizes the resident's placement;
2. Addresses acquisition of and consent for any medical treatment needed by the resident;
3. Addresses the rights and responsibilities of each party involved;
4. Addresses financial responsibility for the placement;
5. Addresses visitation with the resident; and
6. Addresses the education plan for the resident and the responsibilities of all parties.

B. Each resident's record shall contain, prior to a routine admission, a completed placement agreement signed by a facility representative and the legal guardian or placing agency, except as permitted for temporary emergency shelters pursuant to §63.2-1817 of the Code of Virginia.

C. The record of each person admitted based on a court order shall contain a copy of the court order.

6VAC35-51-700. Face sheet.

A. At the time of admission, each resident's record shall include a completed face sheet that contains (i) the resident's full name, last known residence, birth date, birthplace, gender, race, social security number or other unique identifier, religious preference, and admission date; and (ii) names, addresses, and telephone numbers of the resident's legal guardians, placing agency, emergency contacts and parents, if appropriate.

B. Information shall be updated when changes occur.

C. The face sheet for pregnant teens shall also include the expected date of delivery and the name of the hospital to provide delivery services to the resident.

D. The face sheet of residents who are transferred to facilities operated by the same sponsor shall indicate the address and dates of placement and transfer at each location.

E. At the time of discharge the following information shall be added to the face sheet:

1. Date of discharge;
2. Reason for discharge;
3. Names and addresses of persons to whom the resident was discharged; and
4. Forwarding address of the resident, if known.

6VAC35-51-710. Initial objectives and strategies.

Within three days following admission, individualized, measurable objectives and strategies for the first 30 days shall be developed, distributed to affected staff and the resident, and placed in the resident's record. The objectives and strategies shall be based on the reasons for admitting the resident. The requirements of this section do not apply to secure detention facilities.

6VAC35-51-720. Service plan/quarterly reports.

A. An individualized service plan shall be developed and placed in the resident's record within 30 days following admission and implemented immediately thereafter.

B. Individualized service plans shall describe in measurable terms the:

1. Strengths and needs of the resident;
2. Resident's current level of functioning;
3. Goals, objectives, and strategies established for the resident;
4. Projected family involvement;
5. Projected date for accomplishing each objective; and

6. Status of the projected discharge plan and estimated length of stay except that this requirement shall not apply to a facility that discharges only upon receipt of the order of a court of competent jurisdiction.

C. The initial service plan shall be reviewed within 60 days of the initial plan and within each 90-day period thereafter and revised as necessary.

D. The provider shall develop and implement written policies and procedures to document progress of the resident towards meeting goals and objectives of the service plan that shall include the:

1. Format;
2. Frequency; and
3. Person responsible.

E. There shall be a documented quarterly review of each resident's progress 60 days following the initial service plan and within each 90-day period thereafter and shall report the:

1. Resident's progress toward meeting the plan's objectives;
2. Family's involvement;
3. Continuing needs of the resident;
4. Resident's progress towards discharge; and
5. Status of discharge planning.

F. Each plan and quarterly progress report shall include the date it was developed and the signature of the person who developed it.

G. Staff responsible for daily implementation of the resident's individualized service plan shall be able to describe the resident's behavior in terms of the objectives in the plan.

H. There shall be documentation showing the involvement of the following parties, unless clearly inappropriate, in developing and updating the individualized service plan and in developing the quarterly progress report:

1. The resident;
2. The resident's family, if appropriate, and legal guardian;
3. The placing agency; and
4. Facility staff.

I. The initial individualized service plan, each update, and all quarterly progress reports shall be distributed to the resident; the resident's family, legal guardian, or legally authorized representative; the placing agency; and appropriate facility staff if allowed by federal guidelines and using all procedures as required by federal guidelines.

J. The requirements of this section do not apply to secure detention facilities except when a juvenile is confined in postdispositional detention.

6VAC35-51-730. Resident transfer between residential facilities located in Virginia and operated by the same sponsor.

A. Except when transfer is ordered by a court of competent jurisdiction, the receiving provider shall document at the time of transfer:

1. Preparation through sharing information with the resident, the family, and the placing agency about the facility, the staff, the population served, activities, and criteria for admission;
2. Notification to the family (if appropriate), the resident, the placement agency, and the legal guardian;
3. Receipt from the sending facility of a written summary of the resident's progress while at the facility, justification for the transfer, and the resident's current strengths and needs; and
4. Receipt of the resident's record.

B. The sending facility shall retain a copy of the face sheet and a written summary of the child's progress while at the facility and shall document the date of transfer and the name of the facility to which the resident has been transferred.

6VAC35-51-740. Discharge.

A. The provider shall have written criteria for discharge that shall include:

1. Criteria for a resident's completing the program that are consistent with the facility's programs and services;
2. Conditions under which a resident may be discharged before completing the program; and
3. Procedures for assisting placing agencies in placing the residents should the facility cease operation.

B. The provider's criteria for discharge shall be accessible to prospective residents, legal guardians, and placing agencies.

C. The record of each resident discharged upon receipt of the order of a court of competent jurisdiction shall contain a copy of the court order.

D. Residents shall be discharged only to the legal guardian or legally authorized representative.

E. A facility approved to provide residential respite care shall discharge a resident when the legal guardian no longer intends to use the facility's services.

F. Information concerning current medications, need for continuing therapeutic interventions, educational status, and other items important to the resident's continuing care shall be

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provided to the legal guardian or legally authorized representative, as appropriate.

G. Unless discharge is ordered by a court of competent jurisdiction, prior to the planned discharge date, each resident's record shall contain:

1. Documentation that discharge has been planned and discussed with the parent, legal guardian, child-placing agency, and resident; and

2. A written discharge plan.

H. Discharge summaries.

1. No later than 30 days after discharge, a comprehensive discharge summary shall be placed in the resident's record and sent to the persons or agency that made the placement. The discharge summary shall review:

a. Services provided to the resident;

b. The resident's progress toward meeting service plan objectives;

c. The resident's continuing needs and recommendations, if any, for further services and care;

d. Reasons for discharge and names of persons to whom resident was discharged;

e. Dates of admission and discharge; and

f. Date the discharge summary was prepared and the signature of the person preparing it.

2. In lieu of a comprehensive discharge summary, the record of each resident discharged upon receipt of the order of a court of competent jurisdiction shall contain a copy of the court order.

6VAC35-51-750. Placement of residents outside the facility.

A resident shall not be placed outside the facility prior to the facility's obtaining a child-placing agency license from the Department of Social Services, except as permitted by statute or by order of a court of competent jurisdiction.

6VAC35-51-760. Case management services.

A. The program of the facility shall be designed to provide case management services. In secure detention this requirement applies only to residents confined in postdispositional detention. Case management services shall address:

1. Helping the resident and the parents or legal guardian to understand the effects on the resident of separation from the family and the effect of group living;

2. Assisting the resident and the family to maintain their relationships and prepare for the resident's future care;

3. Utilizing appropriate community resources to provide services and maintain contacts with such resources;

4. Helping the resident strengthen his capacity to function productively in interpersonal relationships;

5. Conferring with the child care staff to help them understand the resident's needs in order to promote adjustment to group living; and

6. Working with the resident, the family, or any placing agency that may be involved in planning for the resident's future and in preparing the resident for the return home or to another family, for independent living, or for other residential care.

B. The provision of case management services shall be documented in each resident's record.

6VAC35-51-770. Therapy.

Therapy, if provided, shall be provided by an individual (i) licensed as a therapist by the Department of Health Professions or (ii) who is licensure eligible and working under the supervision of a licensed therapist, unless exempted from these requirements under the Code of Virginia.

6VAC35-51-780. Structured program of care.

A. There shall be evidence of a structured program of care designed to:

1. Meet the residents' physical and emotional needs;

2. Provide protection, guidance, and supervision; and

3. Meet the objectives of any required service plan.

B. There shall be evidence of a structured daily routine designed to ensure the delivery of program services.

C. A daily communication log shall be maintained to inform staff of significant happenings or problems experienced by residents.

D. Health and dental complaints and injuries shall be recorded and shall include the (i) resident's name, complaint, and affected area; and (ii) time of the complaint.

E. The identity of the individual making each entry in the daily communication log shall be recorded.

F. Routines shall be planned to ensure that each resident receives the amount of sleep and rest appropriate for his age and physical condition.

G. Staff shall promote good personal hygiene of residents by monitoring and supervising hygiene practices each day and by providing instruction when needed.

H. The structured daily routine shall comply with any facility and locally imposed curfews.

6VAC35-51-790. Health care procedures.

A. The provider shall have and implement written procedures for promptly:

1. Providing or arranging for the provision of medical and dental services for health problems identified at admission;
2. Providing or arranging for the provision of routine ongoing and follow-up medical and dental services after admission;
3. Providing emergency services for each resident as provided by statute or by the agreement with the resident's legal guardian;
4. Providing emergency services for any resident experiencing or showing signs of suicidal or homicidal thoughts, symptoms of mood or thought disorders, or other mental health problems; and
5. Ensuring that the required information in subsection B of this section is accessible and up to date.

B. The following written information concerning each resident shall be readily accessible to staff who may have to respond to a medical or dental emergency:

1. Name, address, and telephone number of the physician and dentist to be notified;
2. Name, address, and telephone number of a relative or other person to be notified;
3. Medical insurance company name and policy number or Medicaid number;
4. Information concerning:
 - a. Use of medication;
 - b. All allergies, including medication allergies;
 - c. Substance abuse and use; and
 - d. Significant past and present medical problems; and
5. Written permission for emergency medical care, dental care, and obtaining immunizations or a procedure and contacts for obtaining consent.

Subdivisions 3 and 5 of this subsection do not apply to secure detention facilities except when a resident is confined in postdispositional detention.

C. Facilities approved to provide respite care shall update the information required by subsection B of this section at the time of each stay at the facility.

6VAC35-51-800. Medical examinations and treatment.

A. Each child accepted for care shall have a physical examination by or under the direction of a licensed physician no earlier than 90 days prior to admission to the facility or no

later than seven days following admission, except (i) the report of an examination within the preceding 12 months shall be acceptable if a child transfers from one residential facility licensed or certified by a state agency to another, (ii) a physical examination shall be conducted within 30 days following an emergency admission if a report of physical examination is not available, and (iii) this requirement does not apply if a child is admitted to a secure detention facility or to a temporary care facility.

B. Within seven days of placement, except for secure detention, each resident shall have had a screening assessment for tuberculosis as evidenced by the completion of a screening form containing, at a minimum, the elements found on the current screening form published by the Virginia Department of Health. The screening assessment can be no older than 30 days. Secure detention shall have completed the screening assessment on each resident within five days of placement.

C. A screening assessment for tuberculosis shall be completed annually on each resident as evidenced by the completion of a form containing, at a minimum, the elements of the screening form published by the Virginia Department of Health.

D. Each resident's health record shall include written documentation of (i) the initial physical examination, (ii) an annual physical examination by or under the direction of a licensed physician including any recommendation for follow-up care, and (iii) documentation of the provision of follow-up medical care recommended by the physician or as indicated by the needs of the resident.

E. Each physical examination report shall include:

1. Information necessary to determine the health and immunization needs of the resident, including:
 - a. Immunizations administered at the time of the exam;
 - b. Vision exam;
 - c. Hearing exam;
 - d. General physical condition, including documentation of apparent freedom from communicable disease including tuberculosis;
 - e. Allergies, chronic conditions, and handicaps, if any;
 - f. Nutritional requirements, including special diets, if any;
 - g. Restrictions on physical activities, if any; and
 - h. Recommendations for further treatment, immunizations, and other examinations indicated.

2. Date of the physical examination; and

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3. Signature of a licensed physician, the physician's designee, or an official of a local health department.

F. A child with a communicable disease shall not be admitted unless a licensed physician certifies that:

1. The facility is capable of providing care to the child without jeopardizing residents and staff; and
2. The facility is aware of the required treatment for the child and the procedures to protect residents and staff.

The requirements of this subsection shall not apply to temporary shelters and secure detention facilities.

G. Each resident's health record shall include written documentation of (i) an annual examination by a licensed dentist, and (ii) documentation of follow-up dental care recommended by the dentist or as indicated by the needs of the resident. This requirement does not apply to secure detention facilities, temporary care facilities, and respite care facilities.

H. Each resident's health record shall include notations of health and dental complaints and injuries and shall summarize symptoms and treatment given.

I. Each resident's health record shall include, or document the facility's efforts to obtain, treatment summaries of ongoing psychiatric or other mental health treatment and reports, if applicable. This subsection does not apply to secure detention facilities except when a juvenile is confined in detention with a suspended commitment to DJJ.

J. The provider shall develop and implement written policies and procedures that include use of standard precautions and addresses communicable and contagious medical conditions. These policies and procedures shall be approved by a medical professional.

K. A well-stocked first-aid kit shall be maintained and readily accessible for minor injuries and medical emergencies.

6VAC35-51-810. Medication.

A. All medication shall be securely locked and properly labeled.

B. All staff responsible for medication administration shall have successfully completed a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medications before they can administer medication.

C. Staff authorized to administer medication shall be informed of any known side effects of the medication and the symptoms of the effects.

D. A program of medication, including over-the-counter medication, shall be initiated for a resident only when

prescribed in writing by a person authorized by law to prescribe medication.

E. Medication prescribed by a person authorized by law shall be administered as prescribed.

F. A medication administration record shall be maintained of all medicines received by each resident and shall include:

1. Date the medication was prescribed;
2. Drug name;
3. Schedule for administration;
4. Strength;
5. Route;
6. Identity of the individual who administered the medication; and
7. Dates the medication was discontinued or changed.

G. In the event of a medication error or an adverse drug reaction, first aid shall be administered if indicated. Staff shall promptly contact a poison control center, pharmacist, nurse, or physician and shall take actions as directed. If the situation is not addressed in standing orders, the attending physician shall be notified as soon as possible and the actions taken by staff shall be documented.

H. Medication refusals shall be documented including action taken by staff.

I. The provider shall develop and implement written policies and procedures for documenting medication errors, reviewing medication errors and reactions and making any necessary improvements, the disposal of medication, the storage of controlled substances, and the distribution of medication off campus. The policy and procedures must be approved by a health care professional. The provider shall keep documentation of this approval.

J. The telephone number of a regional poison control center and other emergency numbers shall be posted on or next to each nonpay telephone that has access to an outside line in each building in which children sleep or participate in programs.

K. Syringes and other medical implements used for injecting or cutting skin shall be locked.

6VAC35-51-820. Nutrition.

A. Each resident shall be provided a daily diet that (i) consists of at least three nutritionally balanced meals and an evening snack, (ii) includes an adequate variety and quantity of food for the age of the resident, and (iii) meets minimum nutritional requirements and the U.S. Dietary Guidelines.

B. Menus of actual meals served shall be kept on file for at least six months.

C. Special diets shall be provided when prescribed by a physician, and the established religious dietary practices of the resident shall be observed.

D. Staff who eat in the presence of the residents shall be served the same meals as the residents unless a special diet has been prescribed by a physician for the staff or residents or the staff or residents are observing established religious dietary practices.

E. There shall not be more than 15 hours between the evening meal and breakfast the following day.

F. Providers shall assure that food is available to residents who need to eat breakfast before the 15 hours have expired.

G. Providers shall receive approval from their regulatory authority if they wish to extend the time between meals on weekends and holidays. There shall never be more than 17 hours between the evening meal and breakfast the following day on weekends and holidays.

6VAC35-51-830. Staff supervision of residents.

A. No member of the child care staff shall be on duty more than six consecutive days without a rest day, except in an emergency or as approved by the regulatory authority for live-in staff.

B. Child care staff shall have an average of at least two rest days per week in any four-week period. Rest days shall be in addition to vacation time and holidays.

C. Child care staff other than live-in staff shall not be on duty more than 16 consecutive hours, except in an emergency.

D. There shall be at least one trained child care worker, on duty and actively supervising residents at all times that one or more residents are present.

E. Whenever children are being supervised by staff there shall be at least one staff person present with a current basic certificate in standard first aid and a current certificate in cardiopulmonary resuscitation issued by the American Red Cross or other recognized authority.

F. Supervision policies.

1. The provider shall develop and implement written policies and procedures that address staff supervision of children including contingency plans for resident illnesses, emergencies, off-campus activities, and resident preferences. These policies and procedures shall be based on the:

- a. Needs of the population served;
- b. Types of services offered;
- c. Qualifications of staff on duty; and
- d. Number of residents served.

2. At all times the ratio of staff to residents shall be at least one staff to eight residents for facilities during the hours residents are awake, except when the regulatory authority has approved or required a supervision plan with a different ratio based on the needs of the population served.

3. Providers requesting a ratio that allows a higher number of residents to be supervised by one staff person than was approved or required shall submit a justification to the regulatory authority that shall include:

- a. Why resident care will not be adversely affected; and
- b. How residents' needs will be met on an individual as well as group basis.

4. Written policies and procedures governing supervision of residents and any justifications for a ratio deviation that allows a higher number of residents to be supervised by one staff than was approved or required, shall be reviewed and approved by the regulatory authority prior to implementation.

5. The supervision policies or a summary of the policies shall be provided, upon request, to the placing agency or legal guardian prior to placement.

6. The Board of Juvenile Justice shall determine the supervision ratios for facilities regulated by DJJ.

6VAC35-51-840. Emergency telephone numbers.

A. There shall be an emergency telephone number where a staff person may be immediately contacted 24 hours a day.

B. Residents who are away from the facility and the adults responsible for their care during the absence shall be furnished with the emergency phone number.

6VAC35-51-850. Searches.

A. Strip searches and body cavity searches are prohibited except:

1. As permitted by other applicable state regulations; or
2. As ordered by a court of competent jurisdiction.

B. A provider that does not conduct pat downs shall have a written policy prohibiting them.

C. A provider that conducts pat downs shall develop and implement written policies and procedures governing them that shall provide that:

1. Pat downs shall be limited to instances where they are necessary to prohibit contraband;
2. Pat downs shall be conducted by personnel of the same gender as the resident being searched;

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3. Pat downs shall be conducted only by personnel who are specifically authorized to conduct searches by the written policies and procedures; and

4. Pat downs shall be conducted in such a way as to protect the subject's dignity and in the presence of one or more witnesses.

6VAC35-51-860. Behavior support.

A. Within 30 days of admission, the provider shall develop and implement a written behavior support plan that allows the resident to self-manage his own behaviors. Each individualized plan shall include:

1. Identification of positive and problem behavior;
2. Identification of triggers for behaviors;
3. Identification of successful intervention strategies for problem behavior;
4. Techniques for managing anger and anxiety; and
5. Identification of interventions that may escalate inappropriate behaviors.

B. Individualized behavior support plans shall be developed in consultation with the:

1. Resident;
2. Legal guardian;
3. Resident's parents, if applicable;
4. Program director;
5. Placing agency staff; and
6. Other applicable individuals.

C. Prior to working alone with an assigned resident, each staff member shall demonstrate knowledge and understanding of that resident's behavior support plan.

D. This section shall not apply to secure detention and the Reception and Diagnostic Center.

6VAC35-51-870. Timeout.

A. The provider shall develop and implement written policies and procedures governing the conditions under which a resident may be placed in timeout and the maximum period of timeout. The conditions and maximum period of timeout shall be based on the resident's chronological and developmental level.

B. The area in which a resident is placed shall not be locked nor the door secured in a manner that prevents the resident from opening it, except that this subsection does not apply to secure custody facilities.

C. A resident in timeout shall be able to communicate with staff.

D. Staff shall check on the resident in the timeout area at least every 15 minutes and more often depending on the nature of the resident's disability, condition, and behavior.

E. Use of timeout and staff checks on the residents shall be documented.

6VAC35-51-880. Prohibitions.

The following actions are prohibited:

1. Deprivation of drinking water or food necessary to meet a resident's daily nutritional needs, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;

2. Limitation on contacts and visits with the resident's attorney, a probation officer, regulators, or placing agency representative;

3. Bans on contacts and visits with family or legal guardians, except as permitted by other applicable state regulations or by order of a court of competent jurisdiction;

4. Delay or withholding of incoming or outgoing mail, except as permitted by other applicable state and federal regulations or by order of a court of competent jurisdiction;

5. Any action that is humiliating, degrading, or abusive;

6. Corporal punishment;

7. Subjection to unsanitary living conditions;

8. Deprivation of opportunities for bathing or access to toilet facilities, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;

9. Deprivation of health care;

10. Deprivation of appropriate services and treatment;

11. Application of aversive stimuli, except as permitted pursuant to other applicable state regulations;

12. Administration of laxatives, enemas, or emetics, except as ordered by a licensed physician or poison control center for a legitimate medical purpose and documented in the resident's record;

13. Deprivation of opportunities for sleep or rest, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record; and

14. Limitation on contacts and visits with advocates employed by DMHMRSAS or the Virginia Office for Protection and Advocacy.

6VAC35-51-890. Pharmacological or mechanical restraints.

A. Use of mechanical restraints is prohibited, except as permitted by other applicable state regulations or as ordered by a court of competent jurisdiction.

B. Use of pharmacological restraints is prohibited.

6VAC35-51-900. Behavior interventions.

A. The provider shall develop and implement written policies and procedures for behavioral interventions and for documenting and monitoring the management of resident behavior. Rules of conduct shall be included in the written policies and procedures. These policies and procedures shall:

1. Define and list techniques that are used and available for use in the order of their relative degree of restrictiveness;
2. Specify the staff members who may authorize the use of each technique; and
3. Specify the processes for implementing such policies and procedures.

B. Written information concerning the policies and procedures of the provider's behavioral support and intervention programs shall be provided prior to admission to prospective residents, legal guardians, and placing agencies. For court-ordered and emergency admissions, this information shall be provided to:

1. Residents within 12 hours following admission;
2. Placing agencies within 72 hours following the resident's admission; and
3. Legal guardians within 72 hours following the resident's admission, except that this requirement does not apply:
 - a. To secure detention facilities except when a juvenile is confined in postdispositional;
 - b. When a facility is providing temporary care of 30 days or less while conducting a diagnostic evaluation to identify the most appropriate long-term placement for a child who has been committed to DJJ; and

c. When a state psychiatric hospital is evaluating a child's treatment needs as provided by the Code of Virginia.

C. When substantive revisions are made to policies and procedures governing management of resident behavior, written information concerning the revisions shall be provided to:

1. Residents prior to implementation; and
2. Legal guardians and placing agencies prior to implementation except that this requirement does not apply:
 - a. To secure detention facilities;
 - b. When a facility is providing temporary care of 30 days or less while conducting a diagnostic evaluation to identify the most appropriate long-term placement for a child who has been committed to DJJ; and

c. When a state psychiatric hospital is evaluating a child's treatment needs as provided by the Code of Virginia.

D. The provider shall develop and implement written policies and procedures governing use of physical restraint that shall include:

1. The staff position who will write the report and timeframe;
2. The staff position who will review the report and timeframe; and
3. Methods to be followed should physical restraint, less intrusive interventions, or measures permitted by other applicable state regulations prove unsuccessful in calming and moderating the resident's behavior.

E. All physical restraints shall be reviewed and evaluated to plan for continued staff development for performance improvement.

F. Use of physical restraint shall be limited to that which is minimally necessary to protect the resident or others.

G. Trained staff members may physically restrain a resident only after less restrictive interventions have failed or when failure to restrain would result in harm to the resident or others.

H. Only trained staff members may manage resident behavior.

I. Each application of physical restraint shall be fully documented in the resident's record including:

1. Date;
2. Time;
3. Staff involved;
4. Justification for the restraint;
5. Less restrictive interventions that were unsuccessfully attempted prior to using physical restraint;
6. Duration;
7. Description of method or methods of physical restraint techniques used;
8. Signature of the person completing the report and date; and
9. Reviewer's signature and date.

J. Providers shall ensure that restraint may only be implemented, monitored, and discontinued by staff who have been trained in the proper and safe use of restraint, including hands-on techniques.

K. The provider shall review the facility's behavior intervention techniques and policies and procedures at least

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annually to determine appropriateness for the population served.

L. Any time children are present, staff must be present who have completed all trainings in behavior intervention.

6VAC35-51-910. Seclusion.

Seclusion is allowed only as permitted by other applicable state regulations.

6VAC35-51-920. Education.

A. Each resident of compulsory school attendance age shall be enrolled, as provided in the Code of Virginia, in an appropriate educational program within five school business days. Documentation of the enrollment shall be kept in the resident's record.

B. The provider shall ensure that educational guidance and counseling in selecting courses is provided for each resident and shall ensure that education is an integral part of the resident's total program.

C. Providers operating educational programs for children with disabilities shall operate those programs in compliance with applicable state and federal statutes and regulations.

D. When a child with a disability has been placed in a residential facility, the facility shall contact the division superintendent of the resident's home locality. Documentation of the contact with the resident's home school shall be kept in the resident's record.

E. A provider that has an academic or vocational program that is not certified or approved by DOE shall document that teachers meet the qualifications to teach the same subjects in the public schools.

F. Each provider shall develop and implement written policies and procedures to ensure that each resident has adequate study time.

6VAC35-51-930. Religion.

A. The provider shall have and implement written policies regarding opportunities for residents to participate in religious activities.

B. The provider's policies on religious participation shall be available to residents and any individual or agency considering placement of a child in the facility.

C. Residents shall not be coerced to participate in religious activities.

6VAC35-51-940. Recreation.

A. The provider shall have a written description of its recreation program that describes activities that are consistent with the facility's total program and with the ages, developmental levels, interests, and needs of the residents that includes:

1. Opportunities for individual and group activities;

2. Free time for residents to pursue personal interests that shall be in addition to a formal recreation program, except this subdivision does not apply to secure custody facilities;

3. Use of available community recreational resources and facilities, except this subdivision does not apply to secure custody facilities;

4. Scheduling of activities so that they do not conflict with meals, religious services, educational programs, or other regular events; and

5. Regularly scheduled indoor and outdoor recreational activities that are structured to develop skills and attitudes.

B. The provider shall develop and implement written policies and procedures to ensure the safety of residents participating in recreational activities that include:

1. How activities will be directed and supervised by individuals knowledgeable in the safeguards required for the activities;

2. How residents are assessed for suitability for an activity and the supervision provided; and

3. How safeguards for water-related activities will be provided including ensuring that a certified life guard supervises all swimming activities.

C. For all overnight recreational trips away from the facility, the provider shall document trip planning to include:

1. A supervision plan for the entire duration of the activity including awake and sleeping hours;

2. A plan for safekeeping and distribution of medication;

3. An overall emergency, safety, and communication plan for the activity including emergency numbers of facility administration;

4. Staff training and experience requirements for each activity;

5. Resident preparation for each activity;

6. A plan to ensure that all necessary equipment for the activity is in good repair and appropriate for the activity;

7. A trip schedule giving addresses and phone numbers of locations to be visited and how the location was chosen/evaluated;

8. A plan to evaluate residents' physical health throughout the activity and to ensure that the activity is conducted within the boundaries of the resident's capabilities, dignity, and respect for self-determination;

9. A plan to ensure that a certified life guard supervises all swimming activities in which residents participate; and

10. Documentation of any variations from trip plans and reason for the variation.

D. All overnight out-of-state or out-of-country recreational trips require written permission from each resident's legal guardian. Documentation of the written permission shall be kept in the resident's record.

6VAC35-51-950. Community relationships.

A. Opportunities shall be provided for the residents to participate in activities and to utilize resources in the community, except this subsection does not apply to secure custody facilities.

B. The provider shall develop and implement written policies and procedures for evaluating persons or organizations in the community who wish to associate with residents on the premises or take residents off the premises. The procedures shall cover how the facility will determine if participation in such community activities or programs would be in the residents' best interest.

C. Each facility shall have a staff community liaison who shall be responsible for facilitating cooperative relationships with neighbors, the school system, local law enforcement, local government officials, and the community at large.

D. Each provider shall develop and implement written policies and procedures for promoting positive relationships with the neighbors that shall be approved by the regulatory authority.

6VAC35-51-960. Clothing.

A. Provision shall be made for each resident to have an adequate supply of clean, comfortable, and well-fitting clothes and shoes for indoor and outdoor wear.

B. Clothes and shoes shall be similar in style to those generally worn by children of the same age in the community who are engaged in similar activities, except this requirement does not apply to secure custody facilities.

C. Residents shall have the opportunity to participate in the selection of their clothing, except this requirement does not apply to secure custody facilities.

D. Residents shall be allowed to take personal clothing when leaving the facility.

6VAC35-51-970. Allowances and spending money.

A. The provider shall provide opportunities appropriate to the ages and developmental levels of the residents for learning the value and use of money, except this requirement does not apply to secure detention facilities.

B. There shall be a written policy regarding allowances that shall be made available to legal guardians at the time of admission, except that this requirement does not apply to secure detention facilities.

C. The provider shall develop and implement written policies for safekeeping and for recordkeeping of any money that belongs to residents.

D. A resident's funds, including any allowance or earnings, shall be used for the resident's benefit.

6VAC35-51-980. Work and employment.

A. Assignment of chores, that are paid or unpaid work assignments, shall be in accordance with the age, health, ability, and service plan of the resident.

B. Chores shall not interfere with school programs, study periods, meals, or sleep.

C. Work assignments or employment outside the facility, including reasonable rates of pay, shall be approved by the program director with the knowledge and consent of the legal guardian, except this requirement does not apply to secure detention facilities.

D. In both work assignments and employment, the program director shall evaluate the appropriateness of the work and the fairness of the pay.

6VAC35-51-990. Visitation at the facility and to the resident's home.

A. The provider shall have and implement written visitation policies and procedures that allow reasonable visiting privileges and flexible visiting hours, except as permitted by other applicable state regulations.

B. Copies of the written visitation policies and procedures shall be made available to the parents, when appropriate, legal guardians, the resident, and other interested persons important to the resident no later than the time of admission except that when parents or legal guardians do not participate in the admission process, visitation policies and procedures shall be mailed to them within 24 hours after admission.

C. In secure detention, except when a juvenile is confined in postdispositional detention and temporary care facilities, written visitation policies and procedures shall be provided upon request to parents, legal guardians, residents, and other interested persons important to the residents.

6VAC35-51-1000. Resident visitation at the homes of staff.

If a provider permits staff to take residents to the staff's home, the facility must receive written permission of the resident's legal guardian or placing agency before the visit occurs. The written permission shall be kept in the resident's record.

6VAC35-51-1010. Vehicles and power equipment.

A. Transportation provided for or used by children shall comply with local, state, and federal laws relating to:

1. Vehicle safety and maintenance;

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2. Licensure of vehicles;

3. Licensure of drivers; and

4. Child passenger safety, including requiring children to wear appropriate seat belts or restraints for the vehicle in which they are being transported.

B. There shall be written safety rules for transportation of residents appropriate to the population served that shall include taking head counts at each stop.

C. The provider shall develop and implement written safety rules for use and maintenance of vehicles and power equipment.

6VAC35-51-1020. (Reserved.)

6VAC35-51-1030. Serious incident reports.

A. Any serious incident, accident, or injury to the resident; any overnight absence from the facility without permission; any runaway; and any other unexplained absence shall be reported within 24 hours: (i) to the placing agency, (ii) to either the parent or legal guardian, or both, as appropriate; and (iii) noted in the resident's record.

B. The provider shall document the following:

1. The date and time the incident occurred;

2. A brief description of the incident;

3. The action taken as a result of the incident;

4. The name of the person who completed the report;

5. The name of the person who made the report to the placing agency and to either the parent or legal guardian; and

6. The name of the person to whom the report was made.

C. The provider shall notify the regulatory authority within 24 hours of any serious illness or injury, any death of a resident, and all other situations as required by the regulatory authority. Such reports shall include:

1. The date and time the incident occurred;

2. A brief description of the incident;

3. The action taken as a result of the incident;

4. The name of the person who completed the report;

5. The name of the person who made the report to the placing agency and to either the parent or legal guardian; and

6. The name of the person to whom the report was made.

6VAC35-51-1040. Suspected child abuse or neglect.

A. Written policies and procedures related to child abuse and neglect shall be distributed to all staff members. These shall include procedures for:

1. Handling accusations against staff; and

2. Promptly referring, consistent with requirements of the Code of Virginia, suspected cases of child abuse and neglect to the local child protective services unit and for cooperating with the unit during any investigation.

B. Any case of suspected child abuse or neglect shall be reported to the local child protective services unit as required by the Code of Virginia.

C. Any case of suspected child abuse or neglect occurring at the facility, on a facility-sponsored event or excursion, or involving facility staff shall be reported immediately (i) to the regulatory authority and placing agency, and (ii) to either the resident's parent or legal guardian, or both, as appropriate.

D. When a case of suspected child abuse or neglect is reported to child protective services, the resident's record shall include:

1. The date and time the suspected abuse or neglect occurred;

2. A description of the suspected abuse or neglect;

3. Action taken as a result of the suspected abuse or neglect; and

4. The name of the person to whom the report was made at the local child protective services unit.

6VAC35-51-1050. Grievance procedures.

A. The provider shall develop and implement written policies and procedures governing the handling of grievances by residents. If not addressed by other applicable standards, the policies and procedures shall:

1. Be written in clear and simple language;

2. Be communicated to the residents in an age or developmentally appropriate manner;

3. Be posted in an area easily accessible to residents and their parents and legal guardians;

4. Ensure that any grievance shall be investigated by an objective employee who is not the subject of the grievance; and

5. Require continuous monitoring by the provider of any grievance to assure there is no retaliation or threat of retaliation against the child.

B. All documentation regarding grievances shall be kept on file at the facility for three years unless other regulations require a longer retention period.

6VAC35-51-1060. Emergency and evacuation procedures.

A. The provider shall develop a written emergency preparedness and response plan for all locations. The plan shall address:

1. Documentation of contact with the local emergency coordinator to determine (i) local disaster risks, (ii) communitywide plans to address different disasters and emergency situations, and (iii) assistance, if any, that the local emergency management office will provide to the facility in an emergency;

2. Analysis of the provider's capabilities and potential hazards, including natural disasters, severe weather, fire, flooding, work place violence or terrorism, missing persons, severe injuries, or other emergencies that would disrupt the normal course of service delivery;

3. Written emergency management policies outlining specific responsibilities for provision of administrative direction and management of response activities, coordination of logistics during the emergency, communications, life safety of employees, contractors, students/interns, volunteers, visitors and residents, property protection, community outreach, and recovery and restoration;

4. Written emergency response procedures for assessing the situation; protecting residents, employees, contractors, students/interns, volunteers, visitors, equipment and vital records; and restoring services. Emergency procedures shall address:

a. Communicating with employees, contractors, and community responders;

b. Warning and notification of residents;

c. Providing emergency access to secure areas and opening locked doors;

d. Conducting evacuations to emergency shelters or alternative sites and accounting for all residents;

e. Relocating residents, if necessary;

f. Notifying family members and legal guardians;

g. Alerting emergency personnel and sounding alarms; and

h. Locating and shutting off utilities when necessary;

5. Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, designated escape routes, and list of major resources such as local emergency shelters; and

6. Schedule for testing the implementation of the plan and conducting emergency preparedness drills.

B. The provider shall develop emergency preparedness and response training for all employees, contractors, students/interns, and volunteers that shall include responsibilities for:

1. Alerting emergency personnel and sounding alarms;

2. Implementing evacuation procedures, including evacuation of residents with special needs (i.e., deaf, blind, nonambulatory);

3. Using, maintaining, and operating emergency equipment;

4. Accessing emergency information for residents including medical information; and

5. Utilizing community support services.

C. The provider shall document the review of the emergency preparedness plan annually and make necessary revisions. Such revisions shall be communicated to employees, contractors, students, and volunteers and incorporated into training for employees, contractors, students/interns, and volunteers and orientation of residents to services.

D. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety and welfare of residents, the provider shall take appropriate action to protect the health, safety, and welfare of the residents and take appropriate action to remedy the conditions as soon as possible.

E. Employees, contractors, students/interns, and volunteers shall be knowledgeable in and prepared to implement the emergency preparedness plan in the event of an emergency.

F. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety, and welfare of residents, the provider should first respond and stabilize the disaster/emergency. After the disaster/emergency is stabilized, the provider shall report the disaster/emergency to the legal guardian and the placing agency as soon as possible of the conditions at the facility and report the disaster/emergency to the regulatory authority as soon as possible, but no later than 72 hours after the incident occurs.

G. Floor plans showing primary and secondary means of egress shall be posted on each floor in locations where they can easily be seen by staff and residents.

H. The procedures and responsibilities reflected in the emergency procedures shall be communicated to all residents within seven days following admission or a substantive change in the procedures.

I. At least one evacuation drill (the simulation of the facility's emergency procedures) shall be conducted each month in each building occupied by residents.

J. Evacuation drills shall include, at a minimum:

1. Sounding of emergency alarms;

2. Practice in evacuating buildings;

3. Practice in alerting emergency authorities;

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- 4. Simulated use of emergency equipment; and
- 5. Practice in securing resident emergency information.

K. During any three consecutive calendar months, at least one evacuation drill shall be conducted during each shift.

L. A record shall be maintained for each evacuation drill and shall include the following:

- 1. Buildings in which the drill was conducted;
- 2. Date and time of drill;
- 3. Amount of time to evacuate the buildings;
- 4. Specific problems encountered;
- 5. Staff tasks completed including:
 - a. Head count, and
 - b. Practice in notifying emergency authorities; and
- 6. The name of the staff members responsible for conducting and documenting the drill and preparing the record.

M. The record for each evacuation drill shall be retained for three years after the drill.

N. The facility shall assign one staff member who shall ensure that all requirements regarding the emergency preparedness and response plan and the evacuation drill program are met.

6VAC35-51-1070. Independent living programs.

A. Each independent living program must demonstrate that a structured program using materials and curriculum, approved by the regulatory authority, is being used to teach independent living skills. The curriculum must include information regarding each of the following areas:

- 1. Money management and consumer awareness;
- 2. Food management;
- 3. Personal appearance;
- 4. Social skills;
- 5. Health/sexuality;
- 6. Housekeeping;
- 7. Transportation;
- 8. Educational planning/career planning;
- 9. Job-seeking skills;
- 10. Job maintenance skills;
- 11. Emergency and safety skills;
- 12. Knowledge of community resources;
- 13. Interpersonal skills/social relationships;

- 14. Legal skills;
- 15. Leisure activities; and
- 16. Housing.

B. Within 14 days of placement the provider must complete an assessment, including strengths and needs, of the resident's life skills using an independent living assessment tool approved by the regulatory agency. The assessment must cover the following areas:

- 1. Money management and consumer awareness;
- 2. Food management;
- 3. Personal appearance;
- 4. Social skills;
- 5. Health/sexuality;
- 6. Housekeeping;
- 7. Transportation;
- 8. Educational planning/career planning;
- 9. Job-seeking skills;
- 10. Job maintenance skills;
- 11. Emergency and safety skills;
- 12. Knowledge of community resources;
- 13. Interpersonal skills/social relationships;
- 14. Legal skills;
- 15. Leisure activities; and
- 16. Housing.

C. The resident's individualized service plan shall include, in addition to the requirements found in 6VAC35-51-630, goals, objectives, and strategies addressing each of the following areas, as applicable:

- 1. Money management and consumer awareness;
- 2. Food management;
- 3. Personal appearance;
- 4. Social skills;
- 5. Health/sexuality;
- 6. Housekeeping;
- 7. Transportation;
- 8. Educational planning/career planning;
- 9. Job-seeking skills;
- 10. Job maintenance skills;
- 11. Emergency and safety skills;

- 12. Knowledge of community resources;
- 13. Interpersonal skills/social relationships;
- 14. Legal skills;
- 15. Leisure activities; and
- 16. Housing.

D. Each independent living program shall develop and implement policies and procedures to train all direct care staff within 14 days of employment on the content of the independent living curriculum, the use of the independent living materials, the application of the assessment tool, and the documentation methods used. Documentation of the orientation shall be kept in the employee's staff record.

E. If residents age 18 years or older are to share in the responsibility for their own medication with the provider, the independent living program shall develop and implement written policies and procedures that include:

- 1. Training for the resident in self-administration and recognition of side effects;
- 2. Method for storage and safekeeping of medication;
- 3. Method for obtaining approval for the resident to self-administer medication from a person authorized by law to prescribe medication; and
- 4. Method for documenting the administration of medication.

F. Each independent living program shall develop and implement written policies and procedures that ensure that each resident is receiving adequate nutrition as required in 6VAC35-51-820 A, B, and C.

6VAC35-51-1080. Mother/baby programs.

A. Each provider shall develop and implement written policies and procedures to orient direct care staff within 14 days of hire regarding the following:

- 1. Responsibilities of mothers regarding the child;
- 2. Child development including age-appropriate behavior for each stage of development;
- 3. Appropriate behavioral interventions for infants and toddlers;
- 4. Basic infant and toddler care including but not limited to nutritional needs, feeding procedures, bathing techniques; and
- 5. Safety issues for infants and toddlers.

B. Each direct care worker shall have certification in infant CPR and first aid prior to working alone with infants or toddlers.

C. A placement agreement shall be signed by the legal guardian for each adolescent mother, and a separate placement agreement shall be signed for each child at the time of admission.

D. In addition to the requirements of 6VAC35-51-680 B, the application for admission for the adolescent's child must include:

- 1. The placement history of the child;
- 2. The developmental milestones of the child; and
- 3. The nutritional needs of the child.

E. In addition to the requirements of 6VAC35-51-700, the face sheet for the adolescent's child shall also include:

- 1. Type of delivery;
- 2. Weight and length at birth;
- 3. Any medications or allergies; and
- 4. Name and address, if known, of the biological father.

F. A combined service plan following the requirements of 6VAC35-51-720 must be written for the adolescent mother and her child within 30 days of the admission of the adolescent's child.

G. There shall be a combined documented review of the adolescent mother's and her child's progress following the requirements of the quarterly report 60 days following the first combined service plan and within each 90-day period thereafter.

H. The developmental milestones of the adolescent's child must be documented in each quarterly progress report.

I. The record of each child 18 months or younger shall include the child's feeding schedule and directions for feeding. This information shall be posted in the kitchen.

J. The provider shall develop and implement written policies and procedures for tracking:

- 1. What a child 18 months or younger is eating;
- 2. How much a child 18 months or younger is eating; and
- 3. The response to newly introduced foods of the child 18 months or younger.

K. The provider shall develop and implement written policies and procedures to record all diaper changes.

L. The provider shall monitor that all infants are held and spoken to and placed in a position to observe activities when they are awake.

M. Bottle-fed infants who cannot hold their own bottles shall be held when fed. Bottles shall not be propped.

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N. The provider shall monitor that all children of adolescent mothers have access to age-appropriate toys and are provided opportunity for visual and sound stimulation.

O. The provider shall ensure that when an adolescent mother is in school or is working, her child is appropriately cared for, either in a licensed child day program or at the facility.

P. A daily activity log must be kept for each child of the adolescent mother showing what activities the child actually participated in during the day. The daily log must show that children have the opportunity to participate in sensory, language, manipulative, building, large muscle, and learning activities.

Q. The provider shall develop and implement written policies and procedures regarding health care of the adolescent's child including:

1. Obtaining health care;
2. Ensuring follow-up care is provided;
3. Ensuring adolescent mothers administer to their children only prescription and nonprescription medication authorized by a health care professional licensed to prescribe medication; and
4. Medication administration.

R. The provider shall develop and implement written policies and procedures to ensure that all toys and equipment to be used by children are sturdy, of safe construction, nontoxic and free of hazards, and in compliance with industry safety standards.

S. The facility shall develop and implement written policies and procedures for inspecting toys and equipment on a regular basis for cleanliness and safety.

T. Cribs shall be placed where objects outside the crib such as cords from the blinds or curtains are not within reach of infants or toddlers.

U. Pillows and filled comforters shall not be used by children under two years of age.

V. Infant walkers shall not be used.

W. Adolescent mothers and their babies may share a bedroom as allowed by 6VAC35-51-480 E, but shall not share a room with other adolescents or their children.

X. Pregnant adolescents may share a room as allowed by 6VAC35-51-480.

Y. Providers shall develop and implement written policies and procedures to protect infants, toddlers, and young children from dangers in their environment. The policies and procedures must include but not be limited to protection from:

1. Electrocutation;

2. Falling down steps or ramps or gaining access to balconies, porches, or elevated areas;

3. Poisons, including poisonous plants; and

4. Drowning.

6VAC35-51-1090. Campsite programs or adventure activities.

A. All wilderness campsite programs and providers that take residents on wilderness/adventure activities shall develop and implement policies and procedures that include:

1. Staff training and experience requirements for each activity;

2. Resident training and experience requirements for each activity;

3. Specific staff-to-resident ratio and supervision plan appropriate for each activity including sleeping arrangements and supervision during night time hours;

4. Plans to evaluate and document each participant's physical health throughout the activity;

5. Preparation and planning needed for each activity and time frames;

6. Arrangement, maintenance, and inspection of activity areas;

7. A plan to ensure that any equipment and gear that is to be used in connection with a specified wilderness/adventure activity is appropriate to the activity, certified if required, in good repair, in operable condition, and age and body size appropriate;

8. Plans to ensure that all ropes and paraphernalia used in connection with rope rock climbing, rappelling, high and low ropes courses, or other adventure activities in which ropes are used are approved annually by an appropriate certifying organization and have been inspected by staff responsible for supervising the adventure activity before engaging residents in the activity;

9. Plans to ensure that all participants are appropriately equipped, clothed, and wearing safety gear, such as a helmet, goggles, safety belt, life jacket, or a flotation device that is appropriate to the adventure activity in which the resident is engaged;

10. Plans for food and water supplies and management of these resources;

11. Plans for the safekeeping and distribution of medication;

12. Guidelines to ensure that participation is conducted within the boundaries of the resident's capabilities, dignity, and respect for self-determination;

13. Overall emergency, safety, and communication plans for each activity including rescue procedures, frequency of drills, resident accountability, prompt evacuation, and notification of outside emergency services; and

14. Review of trip plans by the trip coordinator.

B. All wilderness campsite programs and providers that take residents on wilderness/adventure activities must designate one staff person to be the trip coordinator who will be responsible for all facility wilderness or adventure trips.

1. This person must have experience in and knowledge regarding wilderness activities and be trained in wilderness first aid. The individual must also have at least one year experience at the facility and be familiar with the facility procedures, staff, and residents.

2. Documentation regarding this knowledge and experience shall be found in the individual's staff record.

3. The trip coordinator will review all trip plans and procedures and will ensure that staff and residents meet the requirements as outlined in the facility's policy regarding each wilderness/adventure activity to take place during the trip.

4. The trip coordinator will review all trip plans and procedures and will ensure that staff and residents meet the requirements as outlined in the facility's policy regarding each wilderness/adventure activity to take place during the trip.

C. The trip coordinator shall conduct a posttrip debriefing within 72 hours of the group's return to base to evaluate individual and group goals as well as the trip as a whole.

D. The trip coordinator will be responsible for writing a summary of the debriefing session and shall be responsible for ensuring that procedures and policies are updated to reflect improvements needed.

E. A trip folder will be developed for each wilderness/adventure activity conducted away from the facility and shall include:

1. Medical release forms including pertinent medical information on the trip participants;

2. Phone numbers for administrative staff and emergency personnel;

3. Daily trip logs;

4. Incident reports;

5. Swimming proficiency list if trip is near water;

6. Daily logs;

7. Maps of area covered by the trip; and

8. Daily plans.

F. Initial physical forms used by wilderness campsite programs and providers that take residents on wilderness or adventure activities shall include:

1. A statement notifying the doctor of the types of activities the resident will be participating in; and

2. A statement signed by the doctor stating the individual's health does not prevent him from participating in the described activities.

G. First-aid kits used by wilderness campsite programs and providers that take residents on adventure activities shall be activity appropriate and shall be accessible at all times.

H. Direct care workers hired by wilderness campsite programs and providers that take residents on wilderness/adventure activities shall be trained in a wilderness first-aid course.

I. The provider shall ensure that before engaging in any aquatic activity, each resident shall be classified by the trip coordinator or his designee according to swimming ability in one of two classifications: swimmer and nonswimmer. This shall be documented in the resident's record and in the trip folder.

J. The provider shall ensure that lifesaving equipment is provided for all aquatic activities and is placed so that it is immediately available in case of an emergency. At a minimum, the equipment shall include:

1. A whistle or other audible signal device; and

2. A lifesaving throwing device.

K. A separate bed, bunk, or cot shall be made available for each person.

L. A mattress cover shall be provided for each mattress.

M. Sleeping areas shall be protected by screening or other means to prevent admittance of flies and mosquitoes.

N. Bedding shall be clean, dry, sanitary, and in good repair.

O. Bedding shall be adequate to ensure protection and comfort in cold weather.

P. Sleeping bags, if used, shall be fiberfill and rated for 0°F.

Q. Linens shall be changed as often as required for cleanliness and sanitation but not less frequently than once a week.

R. Each resident shall be provided with an adequate supply of clean clothing that is suitable for outdoor living and is appropriate to the geographic location and season.

S. Sturdy, water-resistant, outdoor footwear shall be provided for each resident.

T. Each resident shall have adequate personal storage area.

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U. Fire extinguishers of a 2A 10BC rating shall be maintained so that it is never necessary to travel more than 75 feet to a fire extinguisher from combustion-type heating devices, campfires, or other source of combustion.

V. Artificial lighting shall be provided in a safe manner.

W. All areas of the campsite shall be lighted for safety when occupied by residents.

X. Staff of the same sex may share a sleeping area with the residents.

Y. A telephone or other means of communication is required at each area where residents sleep or participate in programs.

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

Initial Application for a Virginia State License/Certificate to Operate a Children's Residential Facility, 032-05-5535-DJJ (eff. 12/07).

Renewal Application for a Virginia State License/Certificate to Operate a Children's Residential Facility, 032-05-5545-DJJ (eff. 12/07).

Renewal Application for a Facility Holding a Conditional License/Certificate, 032-05-588-DJJ (eff. 12/07).

VA.R. Doc. No. R08-1322; Filed July 30, 2008, 8:53 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Fast-Track Regulation

Title of Regulation: **12VAC5-481. Virginia Radiation Protection Regulations (adding 12VAC5-481-451).**

Statutory Authority: §32.1-229 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on September 17, 2008.

Effective Date: October 3, 2008.

Agency Contact: Les Foldesi, Director, Division of Radiological Health, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-8151, FAX (804) 864-8155, or email les.foldesi@vdh.virginia.gov.

Basis: Section 32.1-229 of the Code of Virginia authorizes the Board of Health to: (i) establish a program of effective regulation of sources of radiation for the protection of the public health and safety; (ii) establish a program to promote the orderly regulation of radiation within the Commonwealth, among the states and between the federal government and the Commonwealth and to facilitate intergovernmental cooperation with respect to use and regulation of sources of radiation to the end that duplication of regulation may be minimized; and (iii) establish a program to permit maximum utilization of sources of radiation consistent with the public health and safety.

Purpose: The Nuclear Regulatory Commission (NRC) requires Agreement States, i.e., those states that have an agreement with the NRC for the regulation of radioactive materials, to adopt and implement NRC regulations and orders. The Governor has informed the NRC of the Commonwealth's intention to submit an application for such an agreement. Recently, the NRC informed VDH staff that an Order NRC issued on December 5, 2007, will need to be addressed in the application that VDH intends to submit in the spring of 2008. The Commonwealth will need to implement the Order on the date of signing the agreement, tentatively set for July 2009.

The NRC chose to issue an Order rather than use the regulatory process given the concern for security of the homeland and the urgency expressed by Congress and the public that potential terrorists are denied access to radioactive materials for terrorist activities. The goal of this regulatory action by VDH is to ensure continuity of regulatory requirements during the transition of regulatory authority from the NRC to VDH. Furthermore, by incorporating in VDH regulations the NRC Order that requires certain radioactive materials licensees to fingerprint those individuals who have unrestricted access to certain radioactive materials will reduce the paperwork required of these licensees compared to the alternatives, which would be for VDH to implement this requirement by issuing its own Order, or if VDH were to include the new requirements in license specifications. Currently, NRC licensees must keep a copy of the Order or licensing condition in a separate location from the source and are accountable for keeping a copy in their possession. Many of the Agreement States are using the regulatory process to relieve their licensees from this regulatory burden.

Rationale for Using Fast-Track Process: To ensure continuity of regulatory activity, the NRC will require VDH to implement the December 5, 2007, NRC Order on the date of signing the state agreement with the NRC for the transfer of authority for regulating radioactive materials, tentatively set for July 2009. This deadline cannot be met through the normal regulatory process. The fast-track approach will reduce implementation to less than a year and allow the

regulation to be in place on the date transfer of authority is projected to take place.

The regulation should be noncontroversial, since the affected NRC licensees must comply with the NRC Order prior to June 2, 2008, even in the absence of a VDH regulation. The adoption of the proposed regulation will also provide some relief from a paperwork requirement once the agreement is signed in the year 2009.

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Substance: New provisions require certain radioactive material licensees to:

1. Establish and maintain a fingerprinting program for individuals who require unescorted access to radioactive materials;
2. Certify an individual with the responsibility to determine the trustworthiness and reliability of another individual requiring unescorted access to the radioactive materials;
3. Notify VDH within 24 hours if the results of a FBI identification and criminal history records check indicate that an individual is identified on the FBI's Terrorist Screening Database;
4. Provide protection of the results of FBI identification and criminal history record checks;
5. Notify each affected individual that fingerprints will be used to secure a review of his criminal history record;
6. Provide an individual adversely affected by a records check the procedure for providing corrected or complete information before a decision is rendered; and
7. Exempt certain employees from the fingerprinting requirement; the new provisions also place prohibitions on the licensee for misuse of the information that would infringe upon the constitutional rights of any individual.

The proposed regulation defines radionuclides of concern by including a list of radioactive materials and threshold quantities for each radioisotope.

Issues: The primary advantage to the public is that the fingerprinting requirement is more visible as a regulation than an order issued to specific radioactive material licensees and thus the public is assured that government is making an effort to prevent terrorists from obtaining radioactive materials for

their activities. There are no disadvantages to the public in promulgating the proposed regulation.

The primary advantage to the agency and Commonwealth is that approving the proposed regulation will address NRC's requirement that the state's regulatory program for radioactive materials is compatible and adequate to NRC when the Commonwealth signs an agreement with the NRC for this activity. There are no disadvantages to the agency and the Commonwealth in promulgating the proposed regulation.

The NRC has implemented the requirements in the proposed regulation by an Order issued on December 5, 2007, and requires compliance by June 2, 2008. VDH will need to have these requirements in place on date of agreement with the NRC, tentatively July 2009.

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

Summary of the Proposed Amendments to Regulation. The Virginia Department of Health (VDH) proposes to amend these regulations to reflect orders issued by the U.S. Nuclear Regulatory Commission (NRC). All proposed changes reflect current federal rules.

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

Estimated Economic Impact. VDH anticipates entering into an agreement with the NRC for assuming regulatory authority of NRC's licensees located in Virginia during 2009. VDH is required to implement federal regulations and orders applicable to this regulatory activity. Since adding the proposed language will in effect not change any requirements, the proposal will not produce any costs. Having the rules in the regulations will help provide clarity for the public and licensees. Thus, the benefits exceed the costs.

Businesses and Entities Affected. The proposed amendments affect the 25 radioactive material licensees in the Commonwealth. About 12 qualify as small businesses.¹

Localities Particularly Affected. The locations of licensees are not public information.

Projected Impact on Employment. The proposed amendments do not significantly affect particular localities.

Effects on the Use and Value of Private Property. The proposed amendments do not significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments are unlikely to significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments are unlikely to significantly affect small businesses.

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Real Estate Development Costs. The proposed amendments are unlikely to 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 Data source: Virginia Department of Health

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Health concurs generally with the economic impact assessment prepared by the Department of Planning and Budget.

Summary:

The amendments adopt an order issued on December 5, 2007, by the U.S. Nuclear Regulatory Commission (NRC) to its radioactive materials licensees. The order requires radioactive material licensees that have certain quantities of radioactive materials of concern to have individuals who have unrestricted access to these materials fingerprinted and their names compared with those on the national terrorist screening database.

The Virginia Department of Health anticipates entering into an agreement with the NRC for assuming regulatory authority of NRC's licensees located in Virginia during 2009. VDH is required to implement federal regulations and orders applicable to this regulatory activity.

12VAC5-481-451. Increased controls and fingerprinting.

A. Radionuclides of concern.

<u>Radionuclide</u>	<u>Quantity of concern (TBq)^{1,2}</u>	<u>Quantity of concern (Ci)^{1,2}</u>
<u>Am-241</u>	<u>0.6</u>	<u>16</u>
<u>Am-241/Be</u>	<u>0.6</u>	<u>16</u>
<u>Cf-252</u>	<u>0.2</u>	<u>5.4</u>
<u>Cm-244</u>	<u>0.5</u>	<u>14</u>
<u>Co-60</u>	<u>0.3</u>	<u>8.1</u>
<u>Cs-137</u>	<u>1</u>	<u>27</u>
<u>Gd-153</u>	<u>10</u>	<u>270</u>
<u>Ir-192</u>	<u>0.8</u>	<u>22</u>
<u>Pm-147</u>	<u>400</u>	<u>11,000</u>
<u>Pu-238</u>	<u>0.6</u>	<u>16</u>
<u>Pu-239/Be</u>	<u>0.6</u>	<u>16</u>
<u>Ra-226</u>	<u>0.4</u>	<u>11</u>
<u>Se-75</u>	<u>2</u>	<u>54</u>
<u>Sr-90 (Y-90)</u>	<u>10</u>	<u>270</u>
<u>Tm-170</u>	<u>200</u>	<u>5,400</u>
<u>Yb-169</u>	<u>3</u>	<u>81</u>
<u>Combinations of radioactive materials listed above³</u>	<u>See footnote below⁴</u>	

¹The aggregate activity of multiple, collocated sources of the same radionuclides should be included when the total activity equals or exceeds the quantity of concern.

²The primary values used for compliance are TBq. The curie (Ci) values are rounded to two significant figures for informational purposes only.

³Radioactive materials are to be considered aggregated or collocated if breaching a common physical barrier (e.g., a locked door at the entrance to a storage room) would allow access to the radioactive material or devices containing the radioactive material.

⁴If several radionuclides are aggregated, the sum of the ratios of the activity of each source, i of radionuclide, n , A (i.n), to the quantity of concern for radionuclide n , Q_n , listed for that radionuclide equals or exceeds one. [(aggregated source activity for radionuclide A) / (quantities of concern for radionuclide A)] + [(aggregated source activity for radionuclide B) / (quantities of concern for radionuclide B)] + etc.... ≥ 1 .

B. The following increased controls apply to licensees who, at any given time, possess radioactive sources greater than or equal to the quantities of concern of radioactive material listed in subsection A of this section.

1. In order to ensure the safe handling, use, and control of licensed material in use and in storage, each licensee shall

control access at all times to radioactive material quantities of concern and devices containing such radioactive material (devices), and limit access to such radioactive material and devices to only approved individuals who require access to perform their duties.

a. The licensee shall allow only trustworthy and reliable individuals, approved in writing by the licensee, to have unescorted access to radioactive material quantities of concern and devices. The licensee shall approve for unescorted access only those individuals with job duties that require access to such radioactive material and devices. Personnel who require access to such radioactive material and devices to perform a job duty, but who are not approved by the licensee for unescorted access, must be escorted by an approved individual.

b. For individuals employed by the licensee for three years or less, and for nonlicensee personnel, such as physicians, physicists, housekeeping personnel, and security personnel under contract, trustworthiness and reliability shall be determined at a minimum, by verifying employment history, education, personal references and fingerprinting and the review of an FBI identification and criminal history records check. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the employee (i.e., seeking references not supplied by the individual). For individuals employed by the licensee for longer than three years, trustworthiness and reliability shall be determined, at a minimum, by a review of the employees' employment history with the licensee and fingerprinting and an FBI identification and criminal history records check.

c. Service provider licensee employees shall be escorted unless determined to be trustworthy and reliable by an NRC-required background investigation. Written verification attesting to or certifying the person's trustworthiness and reliability shall be obtained from the licensee providing the service.

d. The licensee shall document the basis for concluding that there is reasonable assurance that an individual granted unescorted access is trustworthy and reliable, and does not constitute an unreasonable risk for unauthorized use of radioactive material quantities of concern. The licensee shall maintain a list of persons approved for unescorted access to such radioactive material and devices by the licensee.

2. In order to ensure the safe handling, use and control of licensed material in use and in storage, each licensee shall have a documented program to monitor and immediately detect, assess, and respond to unauthorized access to radioactive material quantities of concern and devices. Enhanced monitoring shall be provided during periods of

source delivery or shipment, where the delivery or shipment exceeds 100 times the limits in subsection A of this section.

a. The licensee shall respond immediately to any actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices. The response shall include requesting assistance from a local law-enforcement agency (LLEA).

b. The licensee shall have a prearranged plan with LLEA for assistance in response to an actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices that is consistent in scope and timing with a realistic potential vulnerability of the sources containing such radioactive material. The prearranged plan shall be updated when changes to the facility design or operation affect the potential vulnerability of the sources. Prearranged LLEA coordination is not required for temporary job sites.

c. The licensee shall have a dependable means to transmit information between, and among, the various components used to detect and identify an unauthorized intrusion, to inform the assessor, and to summon the appropriate responder.

d. After initiating appropriate response to any actual or attempted theft, sabotage, or diversion of radioactive material or of the devices, the licensee shall, as promptly as possible, notify the agency at (804) 864-8150 during normal business hours and (804) 674-2400 after hours.

e. The licensee shall maintain documentation describing each instance of unauthorized access and any necessary corrective actions to prevent future instances of unauthorized access.

3. Transportation.

a. In order to ensure the safe handling, use, and control of licensed material in transportation for domestic highway and rail shipments by a carrier other than the licensee, for quantities that equal or exceed those in subsection A of this section but are less than 100 times those in subsection A of this section, per consignment, the licensee shall:

(1) Use carriers that:

(a) Use package tracking systems.

(b) Implement methods to assure trustworthiness and reliability of drivers.

(c) Maintain constant control and/or surveillance during transit, and

(d) Have the capability for immediate communication to summon appropriate response or assistance.

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(2) Verify and document that the carrier employs the measures listed in subdivision (1) above.

(3) Contact the recipient to coordinate the expected arrival time of the shipment.

(4) Confirm receipt of the shipment.

(5) Initiate an investigation to determine the location of the licensed material if the shipment does not arrive on or about the expected arrival time. When, through the course of the investigation, it is determined the shipment has become lost, stolen, or missing, the licensee shall immediately notify the agency at (804) 864-8150 during normal working hours and (804) 674-2400 after hours. If after 24 hours of investigating, the location of the material still cannot be determined, the radioactive material shall be determined missing and the licensee shall immediately notify the agency at (804) 864-8150 during normal working hours and (804) 674-2400 after hours.

b. For domestic highway and rail shipments, prior to shipping licensed radioactive material that exceeds 100 times the quantities in subsection A of this section per consignment, the licensee shall:

(1) Notify the NRC (Director, Office of Nuclear Material Safety and Safeguards, U.S. NRC, Washington, DC 20555), in writing, at least 90 days prior to the anticipated date of shipment. The NRC will issue the Order to implement the Additional Security Measures (ASMs) for the transportation of Radioactive Material Quantities of Concern (RAM QC). The licensee shall not ship this material until the ASMs for the transportation of RAM QC are implemented or the licensee is notified otherwise, in writing, by the NRC.

(2) Once the licensee has implemented the ASMs for the transportation of RAM QC, the notification requirements of subdivision 1 of this subsection shall not apply to future shipments of licensed radioactive material that exceeds 100 times the quantities listed in subsection A of this section. The licensee shall implement the ASMs for the transportation of RAM QC.

c. If a licensee employs a Manufacturer/Distributor (M&D) licensee to take possession at the licensee's location of the licensed radioactive material and ship it under its M&D license, the requirements of subdivision a and b above shall not apply.

d. If the licensee is to receive radioactive material greater than or equal to the quantities listed in subsection A of this section, per consignment, the licensee shall coordinate with the originator to:

(1) Establish an expected time of delivery; and

(2) Confirm receipt of transferred radioactive material. If the material is not received at the expected time of delivery, notify the originator and assist in any investigation.

4. In order to ensure the safe handling, use, and control of licensed material in use and in storage, each licensee that possesses mobile or portable devices containing radioactive material in quantities greater than or equal to the limits in subsection A of this section shall:

a. For portable devices, have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.

b. For mobile devices:

(1) That are only moved outside of the facility (e.g., on a trailer), have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.

(2) That are only moved inside a facility, have a physical control that forms a tangible barrier to secure the material from unauthorized movement or removal when the device is not under direct control and constant surveillance by the licensee.

c. For devices in or on a vehicle or trailer, licensees shall also utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee.

5. The licensee shall retain documentation required by this section for three years after these increased controls are no longer effective.

a. The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years after the individual's employment ends.

b. Each time the licensee revises the list of approved persons required in subdivision 1 d of this subsection or the documented program required by subdivision B 2 of this section, the licensee shall retain the previous documentation for three years after the revision.

c. The licensee shall retain documentation on each radioactive material carrier for three years after the licensee discontinues use of that particular carrier.

d. The licensee shall retain documentation on shipment coordination, notifications, and investigations for three years after the shipment or investigation is completed.

e. After the licensee is terminated or amended to reduce possession limits below the quantities of concern, the licensee shall retain all documentation required by this section for three years.

6. Detailed information generated by the licensee that describes the physical protection of radioactive material quantities of concern is sensitive information and shall be protected from unauthorized disclosure.

a. The licensee shall control access to its physical protection information to those persons who have an established need to know the information and are considered to be trustworthy and reliable.

b. The licensee shall develop, maintain and implement policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, its physical protection information for radioactive material covered by this section. The policies and procedures shall include the following:

(1) General performance requirement that each person who produces, receives, or acquires the licensee's sensitive information, protect the information from unauthorized disclosure;

(2) Protection of sensitive information during use, storage, and transit;

(3) Preparation, identification or marking, and transmission;

(4) Access controls;

(5) Destruction of documents;

(6) Use of automatic data processing systems; and

(7) Removal from the licensee's sensitive information category.

C. Fingerprinting.

1. Licensees who possess radionuclides in quantities greater than those listed in subsection A of this section shall establish and maintain a fingerprinting program that meets the following:

a. Each licensee subject to these provisions shall fingerprint each individual who is seeking unescorted access to risk significant radioactive materials equal to or greater than the quantities listed in subsection A of this section. The licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) identification and criminal history records check and ensure that the provisions in this subsection are satisfied;

b. The licensee shall notify each affected individual that the fingerprints will be used to secure a review of his criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record as specified in subdivision 3 of this subsection;

c. Fingerprints for unescorted access need not be taken if an employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61, or any person who has been favorably decided by a U.S. government program involving fingerprinting and an FBI identification and criminal history records check (e.g., National Agency Check, Transportation Worker Identification Credentials in accordance with 49 CFR Part 1572, Bureau of Alcohol Tobacco Firearms and Explosives background checks and clearances in accordance with 27 CFR Part 555, Health and Human Services security risk assessments for possession and use of select agents and toxins in accordance with 42 CFR Part 73, Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license in accordance with 49 CFR Part 1572, Customs and Border Patrol's Free and Secure Trade Program (Note 1: within the last five calendar years, or any person who has an active federal security clearance provided in the latter two cases that they make available the appropriate documentation; Note 2: Written confirmation from the agency/employer that granted the federal security clearance or reviewed the FBI criminal history records results based upon a fingerprint identification check must be provided. The licensee must retain this documentation for a period of three years from the date the individual no longer requires unescorted access to certain radioactive material associated with the licensee's activities.));

d. All fingerprints obtained by the licensee pursuant to this section must be submitted to the NRC (Division of Facilities and Security, 11545 Rockville Pike, ATTN: Criminal History Program, Mail Stop T-6E46, Rockville, MD 20852) for transmission to the FBI. Additionally, the licensee shall submit a certification of the trustworthiness and reliability of the Trustworthy & Reliability (T & R) Official as determined in accordance with subdivision 5 of this subsection. (See the NRC's website at www.nrc.gov for more information on submitting fingerprints, including pricing and address changes). The licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthiness and reliability requirements of subdivision B 1 of this section, in making a determination whether to grant unescorted access to certain radioactive materials;

e. The licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access to risk significant radioactive materials equal to or greater than the quantities listed in subsection A of this section; and

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f. The licensee shall document the basis for its determination whether to grant or continue to allow unescorted access to risk significant radioactive materials equal to or greater than those listed in subsection A of this section.

2. Prohibitions. A licensee shall not base a final determination to deny an individual unescorted access to certain radioactive material solely on the basis of information received from the FBI involving: an arrest more than one year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal. A licensee shall not use information received from a criminal history check obtained pursuant to this section in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

3. Right to correct and complete information. Prior to any final adverse determination, the licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of one year from the date of the notification. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law-enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537-9700. In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency.

The licensee must provide at least 10 days for an individual to initiate an action challenging the results of an FBI identification and criminal history records check after the record is made available for his review. The licensee may make a final unescorted access to certain radioactive material determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on unescorted access to certain radioactive

material, the licensee shall provide the individual its documented basis for denial. Unescorted access to certain radioactive material shall not be granted to an individual during the review process.

4. Protection of information.

a. Each licensee who obtains a criminal history record on an individual pursuant to this section shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

b. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his representative, or to those who have a need to access the information in performing assigned duties in the process of determining unescorted access to certain radioactive material. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need to know.

c. The personal information obtained on an individual from a criminal history record check may be transferred to another licensee if the licensee holding the criminal history record check receives the individual's written request to re-disseminate the information contained in his file, and the gaining licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

d. The licensee shall make criminal history records obtained under this section available for examination by an authorized representative of VDH to determine compliance with the regulations.

e. The licensee shall retain all fingerprints and criminal history records from the FBI, or a copy if the individual's file has been transferred, for three years after termination of employment or determination of unescorted access to certain radioactive material (whether unescorted access was approved or denied). After the required three-year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

5. Trustworthy & Reliability Official.

a. The licensee shall provide under oath or affirmation, a certification to the agency that the T & R Official (an individual with the responsibility to determine the trustworthiness and reliability of another individual requiring unescorted access to the radioactive materials identified in subsection A of this section) is deemed trustworthy and reliable by the licensee as required in subdivision 5 b below.

b. The T & R Official, if he does not require unescorted access, must be deemed trustworthy and reliable by the licensee in accordance with the requirements of subdivision B 1 of this section before making a determination regarding the trustworthiness and reliability of another individual. If the T & R Official requires unescorted access, the licensee must consider the results of fingerprinting and the review of an FBI identification and criminal history records check as a component in approving a T & R Official.

6. The licensee shall notify the agency at (804) 864-6168 within 24 hours if the results from an FBI identification and criminal history records check indicate that an individual is identified on the FBI's Terrorist Screening Data Base.

7. Prior to requesting fingerprints from any individual, the licensee shall provide a copy of 12VAC5-481-451 to that individual.

VA.R. Doc. No. R08-1250; Filed July 28, 2008, 4:05 p.m.

◆ ————— ◆
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Emergency Regulation

Title of Regulation: 12VAC30-80. Methods and Standards for Establishing Payment Rates; other Types of Care (amending 12VAC30-80-40).

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

Effective Dates: August 4, 2008, through August 3, 2009.

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

Preamble:

The Administrative Process Act (§2.2-4011) provides that agencies may adopt emergency regulations in situations in which Virginia statutory law, the Virginia appropriation act, or federal law or regulation requires that a regulation shall be effective in 280 days or less from its enactment. This suggested emergency regulation meets the standard at §2.2-4011 B of the Code of Virginia as provided in Item 302 JJ of Chapter 847 of the 2008 Acts of Assembly.

The department is promulgating this regulation to create a specialty drug reimbursement methodology based upon the Wholesale Acquisition Cost (WAC) of designated specialty drugs. Specialty drug products are products

used to treat chronic, high-cost or rare diseases, including drugs for the treatment of certain diseases such as hepatitis C and multiple sclerosis, as well as drugs such as growth hormone agents and interferon. These drugs tend to be much higher in cost than standard pharmaceutical products, and this action implements a new methodology to help contain the higher costs associated with these drugs. The new methodology, described in subdivision 10 of 12VAC30-80-40, is a formula based upon the WAC of these specialty drugs. The methodology computes a price above a given percentage of the WAC for each specified drug. The current percentage value is 4.7%. In addition to the formula, the new subsection also references the location of the list of designated drugs subject to the new methodology on the DMAS website, and states that the new pricing methodology is reviewed and subject to the same dispute resolution and appeal rights as the standard Maximum Allowable Cost pricing methodology.

12VAC30-80-40. Fee-for-service providers: pharmacy.

Payment Except as noted in subdivision 10, payment for pharmacy services shall be the lowest of items 1 through 5 (except that items 1 and 2 will not apply when prescriptions are certified as brand necessary by the prescribing physician in accordance with the procedures set forth in ~~42 CFR 447.331 (e)~~ 42 CFR 447.512(c) if the brand cost is greater than the Centers for Medicare and Medicaid Services (CMS) upper limit of VMAC cost) subject to the conditions, where applicable, set forth in subdivisions 6 and 7 of this section:

1. The upper limit established by the CMS for multiple source drugs pursuant to ~~42 CFR 447.331~~ 42 CFR 447.512 and ~~447.332~~ 42 CFR 447.514, as determined by the CMS Upper Limit List plus a dispensing fee. If the agency provides payment for any drugs on the HCFA Upper Limit List, the payment shall be subject to the aggregate upper limit payment test.

2. The methodology used to reimburse for generic drug products shall be the higher of either (i) the lowest Wholesale Acquisition Cost (WAC) plus 10% or (ii) the second lowest WAC plus 6.0%. This methodology shall reimburse for products' costs based on a Maximum Allowable Cost (VMAC) list to be established by the single state agency.

a. In developing the maximum allowable reimbursement rate for generic pharmaceuticals, the department or its designated contractor shall:

(1) Identify three different suppliers, including manufacturers, that are able to supply pharmaceutical products in sufficient quantities. The drugs considered must be listed as therapeutically and pharmaceutically equivalent in the Food and Drug Administration's most recent version of the Approved Drug Products with

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Therapeutic Equivalence Evaluations (Orange Book). Pharmaceutical products that are not available from three different suppliers, including manufacturers, shall not be subject to the VMAC list.

(2) Identify that the use of a VMAC rate is lower than the Federal Upper Limit (FUL) for the drug. The FUL is a known, widely published price provided by CMS; and

(3) Distribute the list of state VMAC rates to pharmacy providers in a timely manner prior to the implementation of VMAC rates and subsequent modifications. DMAS shall publish on its website, each month, the information used to set the Commonwealth's prospective VMAC rates, including, but not necessarily limited to:

(a) The identity of applicable reference products used to set the VMAC rates;

(b) The Generic Code Number (GCN) or National Drug Code (NDC), as may be appropriate, of reference products;

(c) The difference by which the VMAC rate exceeds the appropriate WAC price; and

(d) The identity and date of the published compendia used to determine reference products and set the VMAC rate. The difference by which the VMAC rate exceeds the appropriate WAC price shall be at least or equal to 10% above the lowest-published wholesale acquisition cost for products widely available for purchase in the Commonwealth and shall be included in national pricing compendia.

b. Development of a VMAC rate that does not have a FUL rate shall not result in the use of higher-cost innovator brand name or single source drugs in the Medicaid program.

c. DMAS or its designated contractor shall:

(1) Implement and maintain a procedure to add or eliminate products from the list, or modify VMAC rates, consistent with changes in the fluctuating marketplace. DMAS or its designated contractor will regularly review manufacturers' pricing and monitor drug availability in the marketplace to determine the inclusion or exclusion of drugs on the VMAC list; and

(2) Provide a pricing dispute resolution procedure to allow a dispensing provider to contest a listed VMAC rate. DMAS or its designated contractor shall confirm receipt of pricing disputes within 24 hours, via telephone or facsimile, with the appropriate documentation of relevant information, e.g., invoices. Disputes shall be resolved within three business days of confirmation. The pricing dispute resolution process will include DMAS' or the contractor's verification of accurate pricing to ensure consistency with marketplace pricing and drug

availability. Providers will be reimbursed, as appropriate, based on findings. Providers shall be required to use this dispute resolution process prior to exercising any applicable appeal rights.

3. The provider's usual and customary charge to the public, as identified by the claim charge.

4. The Estimated Acquisition Cost (EAC), which shall be based on the published Average Wholesale Price (AWP) minus a percentage discount established by the General Assembly (as set forth in subdivision 8 of this section) or, in the absence thereof, by the following methodology set out in subdivisions a through c below.

a. Percentage discount shall be determined by a statewide survey of providers' acquisition cost.

b. The survey shall reflect statistical analysis of actual provider purchase invoices.

c. The agency will conduct surveys at intervals deemed necessary by DMAS.

5. Payment for pharmacy services will be as described above however, payment for legend drugs will include the allowed cost of the drug plus only one dispensing fee per month for each specific drug. Exceptions to the monthly dispensing fees shall be allowed for drugs determined by the department to have unique dispensing requirements. The dispensing fee for brand name and generic drugs is \$4.00.

6. The Program pays additional reimbursement for unit dose dispensing systems of dispensing drugs. DMAS defines its unit dose dispensing system coverage consistent with that of the Board of Pharmacy of the Department of Health Professions (18VAC110-20-420). This service is paid only for patients residing in nursing facilities. Reimbursements are based on the allowed payments described above plus the unit dose per capita fee to be calculated by DMAS' fiscal agent based on monthly per nursing home resident service per pharmacy provider. Only one service fee per month may be paid to the pharmacy for each patient receiving unit dose dispensing services. Multisource drugs will be reimbursed at the maximum allowed drug cost for specific multiple source drugs as identified by the state agency or CMS' upper limits as applicable. All other drugs will be reimbursed at drug costs not to exceed the estimated acquisition cost determined by the state agency. The original per capita fee shall be determined by a DMAS analysis of costs related to such dispensing, and shall be reevaluated at periodic intervals for appropriate adjustment. The unit dose dispensing fee is \$5.00 per recipient per month per pharmacy provider.

7. Determination of EAC was the result of a report by the Office of the Inspector General that focused on appropriate Medicaid marketplace pricing of pharmaceuticals based on

the documented costs to the pharmacy. An EAC of AWP minus 10.25% shall become effective July 1, 2002.

The dispensing fee for brand name and generic drugs of \$4.00 shall remain in effect, creating a payment methodology based on the previous algorithm (least of 1 through 5 of this subsection above) plus a dispensing fee where applicable.

8. Home infusion therapy.

a. The following therapy categories shall have a pharmacy service day rate payment allowable: hydration therapy, chemotherapy, pain management therapy, drug therapy, total parenteral nutrition (TPN). The service day rate payment for the pharmacy component shall apply to the basic components and services intrinsic to the therapy category. Submission of claims for the per diem rate shall be accomplished by use of the CMS 1500 claim form.

b. The cost of the active ingredient or ingredients for chemotherapy, pain management and drug therapies shall be submitted as a separate claim through the pharmacy program, using standard pharmacy format. Payment for this component shall be consistent with the current reimbursement for pharmacy services. Multiple applications of the same therapy shall be reimbursed one service day rate for the pharmacy services. Multiple applications of different therapies shall be reimbursed at 100% of standard pharmacy reimbursement for each active ingredient.

9. Supplemental rebate agreement. Based on the requirements in §1927 of the Social Security Act, the Commonwealth of Virginia has the following policies for the supplemental drug rebate program for Medicaid recipients:

a. The model supplemental rebate agreement between the Commonwealth and pharmaceutical manufacturers for legend drugs provided to Medicaid recipients, submitted to CMS on February 5, 2004, and entitled Virginia Supplemental Drug Rebate Agreement Contract A and Amendment #2 to Contract A has been authorized by CMS.

b. The model supplemental rebate agreement between the Commonwealth and pharmaceutical manufacturers for drugs provided to Medicaid recipients, submitted to CMS on February 5, 2004, and entitled Virginia Supplemental Drug Rebate Agreement Contract B and Amendment #2 to Contract B has been authorized by CMS.

c. The model supplemental rebate agreement between the Commonwealth and pharmaceutical manufacturers for drugs provided to Medicaid recipients, submitted to CMS on February 5, 2004, and entitled Virginia Supplemental Drug Rebate Agreement Contract C, and Amendments #1 and #2 to Contract C has been authorized by CMS.

d. Supplemental drug rebates received by the state in excess of those required under the national drug rebate agreement will be shared with the federal government on the same percentage basis as applied under the national drug rebate agreement.

e. Prior authorization requirements found in §1927(d)(5) of the Social Security Act have been met.

f. Nonpreferred drugs are those that were reviewed by the Pharmacy and Therapeutics Committee and not included on the preferred drug list. Nonpreferred drugs will be made available to Medicaid beneficiaries through prior authorization.

g. Payment of supplemental rebates may result in a product's inclusion on the PDL.

10. MAC methodology for specialty drugs.

a. The methodology used to reimburse for designated specialty drug products shall be the WAC price plus the WAC percentage. The WAC percentage is a constant percentage identified each year for all GCNs.

b. Designated specialty drug products are certain products used to treat chronic, high-cost or rare diseases; the drugs subject to this pricing methodology and their current reimbursement rates are listed on the DMAS website at the following internet address:

http://www.dmas.virginia.gov/downloads/pdfs/pharm-special_mac_list.pdf

c. The MAC reimbursement methodology for specialty drugs shall be subject to the pricing review and dispute resolution procedures described in subdivisions 2 c 1 and 2 c 2 of this section.

VA.R. Doc. No. R08-1319; Filed August 4, 2008, 3:18 p.m.

Fast-Track Regulation

Title of Regulation: 12VAC30-100. State Programs (amending 12VAC30-100-170).

Statutory Authority: §§32.1-324, 32.1-325, 32.1-344, 32.1-346 and 32.1-347 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until September 17, 2008.

Effective Date: October 2, 2008.

Agency Contact: Lois Brengel, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-7958, FAX (804) 786-1680, or email lois.brengel@dmas.virginia.gov.

Regulations

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and § 32.1-324 of the Code of Virginia authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the board's requirements. Section 32.1-344 of the Code of Virginia establishes within the Department of Medical Assistance Services the State/Local Hospitalization Program for indigent persons and permits the director of DMAS to administer the program and expend state and local funds in accordance with the provisions of this chapter. Sections 32.1-346 and 32.1-347 of the Code of Virginia authorizes the Board of Medical Assistance Services to promulgate regulations to establish uniform eligibility criteria by defining those persons who will qualify for payment for medical care under the program.

Purpose: The purpose of this regulatory change is to permit limited coverage Medicaid recipients who are eligible for limited benefits, such as Medicare premiums, co-payments and deductibles, or both, and family planning services to apply for SLH benefits when they have a healthcare need that their limited Title XIX Medicaid benefits does not address, but which the SLH program might meet. This change will be a direct benefit to the health, safety, and welfare of these citizens of the Commonwealth who are eligible for only limited Medicaid benefits by providing SLH services to individuals who would otherwise have no available means to pay for their medical care needs.

Rationale for Using Fast-Track Process: The fast track process is being utilized to promulgate this change in regulatory language as it is expected to be a noncontroversial clarification. The result of the clarification is to better articulate the intent of the original language by precluding duplicity of services (the receipt of both Medicaid coverage and SLH coverage at the same time) and preserving the limited appropriation for those in need of this coverage. The requested change in regulation regarding SLH Program eligibility is required to correct the unintended consequence from a change that occurred in the Medicaid Program after SLH regulations were revised by the General Assembly in 1989. The revised SLH regulations were based on the Medicaid Program of that same era. At that time there was no difference in the level of coverage provided to Medicaid recipients regardless of the Medicaid-covered group in which the individual was eligible. However, a subsequent change in federal regulations created the limited coverage Medicaid Groups. The limited coverage groups were added to the Virginia Medicaid Program effective January 1, 1993. After review of the issue, this is a change for which there is no other means of resolution except to promulgate in a change in language.

Substance: Current SLH policy precludes eligibility to those individuals who are found eligible for any benefits of the Medicaid Program. The requested change in regulation

regarding SLH Program eligibility is required to correct the unintended consequence from a change that occurred in the Medicaid Program after SLH regulations were revised by the General Assembly in 1989. The revised SLH regulations were based on the Medicaid Program of that same era. At that time there was no difference in the level of coverage provided to Medicaid recipients regardless of the Medicaid covered group in which the individual was eligible. However, a subsequent change in federal regulations created the limited coverage Medicaid Groups. These groups were added to the Virginia Medicaid Program effective January 1, 1993.

While full benefit Medicaid and SLH recipients are provided the same level of coverage, limited coverage Medicaid recipients are only provided coverage of Medicare premiums, co-payments and deductibles, or both, and family planning services. SLH coverage is limited to persons receiving outpatient/inpatient hospital treatment, ambulatory surgical services or health department clinics visits. The period that is covered is limited to the number of days for which services were received. The proposed change to this regulation will remove a barrier that occurred unintentionally when the federal government added limited coverage groups to the Medicaid Program.

The intent of the original SLH regulatory language was to preserve the limited appropriation for the SLH program when individuals were eligible for the same benefits and for a more extensive time period under the Medicaid Program. Therefore, an individual who applied for SLH was screened and if eligible, approved for Medicaid coverage instead of SLH coverage. The individual benefitted as care under the Medicaid Program was not limited to payment of the number of days for an inpatient in a hospital stay. The broad scope of the current language bars all limited coverage Medicaid eligible individuals from receiving benefits they both applied for and needed, as it does not distinguish between the levels of Medicaid coverage. Since limited groups do not have the same coverage, Medicaid eligibility does not benefit the individual by providing assistance for his most immediate needs. For example, a person breaks a leg and is only eligible for a Medicaid limited benefit group that would not cover the hospital bills; SLH would cover the hospitalization, but current regulation prohibits this individual from receiving SLH benefits, as he is Medicaid eligible.

This change would allow individuals to receive SLH benefits who receive Plan First (Family Planning Waiver services) coverage or who are Qualified Medicare Beneficiaries. Plan First recipients are only eligible to receive family planning services. Qualified Medicare Beneficiaries could receive SLH coverage for the time period prior to receipt of their limited Medicaid coverage, since federal regulations indicate that coverage cannot begin until the month after they are determined eligible.

This change may add a limited number of individuals to the population of SLH-eligible persons. However, only those individuals who meet SLH eligibility criteria, and are not yet receiving Medicaid payment of Medicare premiums, co-insurance and deductibles or both or are eligible for Plan First coverage (Family Planning Waiver services) would be eligible for SLH; therefore, the number added to this stratum will be diminished. Additionally applications for Medical Assistance Programs are processed chronologically, and there is no guarantee that SLH funding will be available to cover medical costs at any given point in time.

The recommended clarification of language will preserve the intent of the original regulation, and allow certain limited coverage Medicaid eligible individuals who do not have access to benefits under SLH to gain access to that coverage. Amending the language will provide medical assistance to those individuals who are requesting SLH and are eligible to receive coverage that would otherwise not be available to pay for their medical needs.

Issues: The disadvantage to the public or to the Commonwealth is that this regulation could increase the need relative to limited funding; however, the advantage is to the private citizen by removing an unintended barrier to services for which they should have access.

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

Summary of the Proposed Amendments to Regulation. The proposed changes will make limited benefit Medicaid recipients eligible for State and Local Hospitalization services.

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

Estimated Economic Impact. The proposed changes will make limited benefit Medicaid recipients eligible for State and Local Hospitalization (SLH) services. Under the current regulatory language, limited benefit Medicaid recipients such as family planning services recipients or qualified Medicare beneficiaries are not eligible for services under SLH program.

According to Department of Medical Assistance Services (DMAS), ineligibility of limited benefit Medicaid recipients for SLH program has surfaced as an unintended consequence following certain changes to federal Medicaid rules. DMAS explains that SLH program regulations were revised in 1989 and excluded all Medicaid eligible recipients from SLH coverage. At that time all Medicaid recipients were fully covered. However, the changes occurred in 1993 have created limited coverage Medicaid recipients such as family planning services recipients or qualified Medicare beneficiaries. Because the distinction between limited and full coverage Medicaid beneficiaries was unforeseen in the SLH program

regulations, limited coverage Medicaid beneficiaries have been denied coverage from the SLH benefits since 1993.

The proposed regulations will make limited coverage Medicaid recipients eligible for SLH services. One of the benefits of the proposed changes is allowing limited coverage Medicaid recipients to apply for and receive SLH benefits. A significant cost on the other hand is the reduced likelihood of current eligible population in receiving SLH services as the SLH services are 100 percent funded by limited general funds and eligibility is based on the chronological application date. Once the available funds are exhausted, no SLH services are rendered.

The main goal of the proposed changes is to address an unintended consequence of federal Medicaid changes on Virginia's SLH program and restore the intent of the original regulations.

Businesses and Entities Affected. In 2007, there were approximately 11,100 individuals who applied for SLH services and there were 4,400 additional individuals who would have been eligible to apply for SLH services under the revised eligibility criteria.

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

Projected Impact on Employment. No significant impact on employment is expected.

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

Small Businesses: Costs and Other Effects. No significant costs and other effects on small businesses are expected.

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

Real Estate Development Costs. No adverse impact on real estate development costs is expected.

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 has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Eligibility Requirements for State/Local Hospitalization Program (12VAC30-100-170). The agency raises no issues with this analysis.

Summary:

The proposed amendment changes the eligibility requirements for the State and Local Hospitalization (SLH) program. Currently, individuals eligible for coverage in any other Medicaid program are ineligible to participate in SLH. The proposed change will allow individuals eligible in limited benefit Medicaid programs, such as the Qualified Medicare Beneficiaries (QMBs) to be evaluated for coverage in SLH if a medical need arises that cannot be covered by the limited Medicaid benefit program.

12VAC30-100-170. Persons eligible for Title XIX services.

Persons who have been determined eligible for services as defined by and contained in the Social Security Act Title XIX shall not be eligible for SLH program benefits established by §32.1-346 B 3 of the Code of Virginia. This exclusion does not apply to Medicaid-eligible individuals who are enrolled in the Family Planning Waiver described in 12VAC30-135-10 through 12VAC30-135-40, or those determined eligible as a Qualified Medicare Beneficiary (QMB). Individuals determined eligible for Medicare coverage as a QMB may be determined eligible for SLH program benefits for the months prior to their enrollment for services as a QMB.

VA.R. Doc. No. R08-1170; Filed July 29, 2008, 10:53 a.m.



TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Final Regulation

<p><u>REGISTRAR'S NOTICE:</u> The Board of Housing and Community Development is claiming an exclusion 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 Board of Housing and Community Development will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.</p>
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Title of Regulation: **13VAC5-51. Virginia Statewide Fire Prevention Code (amending 13VAC5-51-81).**

Statutory Authority: §27-97 of the Code of Virginia.

Effective Date: October 1, 2008.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, The Jackson Center, 501 North 2nd Street, Richmond, VA 23219-1321, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Summary:

Chapter 499 of the 2008 Acts of Assembly provides that no fee may be charged for the State Fire Marshal's Office to inspect schools. This action amends the Statewide Fire Prevention Code by removing the fee schedule previously established for the inspection of schools.

13VAC5-51-81. Section 107.0. Permits.

A. 107.1. Prior notification: The fire official may require notification prior to (i) activities involving the handling, storage or use of substances, materials or devices regulated by the SFPC; (ii) conducting processes which produce conditions hazardous to life or property; or (iii) establishing a place of assembly.

B. 107.2. Permits required: Permits may be required by the fire official as permitted under the SFPC in accordance with Table 107.2, except that the fire official shall require permits for the manufacturing, storage, handling, use, and sale of explosives. An application for a permit to manufacture, store, handle, use, or sell explosives shall only be made by an individual certified as a blaster in accordance with Section 3301.4, or by a person who has been issued a background clearance card in accordance with Section 3301.2.3.1.1.

Exception: Such permits shall not be required for the storage of explosives or blasting agents by the Virginia Department

of State Police provided notification to the fire official is made annually by the Chief Arson Investigator listing all storage locations.

C. Add Table 107.2 as follows:

Table 107.2.
OPERATIONAL PERMIT REQUIREMENTS (to be filled in by local jurisdiction).

Description	Permit required (yes or no)	Permit fee	Inspection fee				
Aerosol products. An operational permit is required to manufacture, store or handle an aggregate quantity of Level 2 or Level 3 aerosol products in excess of 500 pounds (227 kg) net weight.							
Amusement buildings. An operational permit is required to operate a special amusement building.							
Aviation facilities. An operational permit is required to use a Group H or Group S occupancy for aircraft servicing or repair and aircraft fuel-servicing vehicles. Additional permits required by other sections of this code include, but are not limited to, hot work, hazardous materials and flammable or combustible finishes.							
Carnivals and fairs. An operational permit is required to conduct a carnival or fair.							
Battery systems. An operational permit is required to install stationary lead-acid battery systems having a liquid capacity of more than 50 gallons (189 L).							
Cellulose nitrate film. An operational permit is required to store, handle or use cellulose nitrate film in a Group A occupancy.							
Cellulose nitrate film. An operational permit is required to store, handle or use cellulose nitrate film in a Group A occupancy.							
Combustible dust-producing operations. An operational permit is required to operate a grain elevator, flour starch mill, feed mill, or a plant pulverizing aluminum, coal, cocoa, magnesium, spices or sugar, or other operations producing combustible dusts as defined in Chapter 2.							
<p>Combustible fibers. An operational permit is required for the storage and handling of combustible fibers in quantities greater than 100 cubic feet (2.8 m³).</p> <p>Exception: An operational permit is not required for agricultural storage.</p>							
<p>Compressed gas. An operational permit is required for the storage, use or handling at normal temperature and pressure (NTP) of compressed gases in excess of the amounts listed below.</p> <p>Exception: Vehicles equipped for and using compressed gas as a fuel for propelling the vehicle.</p>							
<p style="text-align: center;">Permit Amounts for Compressed Gases</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;">Type of Gas</th> <th style="width: 70%;">Amount (cubic feet at NTP)</th> </tr> </thead> <tbody> <tr> <td>Corrosive</td> <td style="text-align: center;">200</td> </tr> </tbody> </table>	Type of Gas	Amount (cubic feet at NTP)	Corrosive	200			
Type of Gas	Amount (cubic feet at NTP)						
Corrosive	200						

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Flammable (except cryogenic fluids and liquefied petroleum gases)	200			
Highly toxic	Any Amount			
Inert and simple asphyxiant	6,000			
Oxidizing (including oxygen)	504			
Toxic	Any Amount			
For SI: 1 cubic foot = 0.02832 m ³ .				
<p>Covered mall buildings. An operational permit is required for:</p> <ol style="list-style-type: none"> 1. The placement of retail fixtures and displays, concession equipment, displays of highly combustible goods and similar items in the mall. 2. The display of liquid- or gas-fired equipment in the mall. 3. The use of open-flame or flame-producing equipment in the mall. 				
<p>Cryogenic fluids. An operational permit is required to produce, store, transport on site, use, handle or dispense cryogenic fluids in excess of the amounts listed below.</p> <p>Exception: Operational permits are not required for vehicles equipped for and using cryogenic fluids as a fuel for propelling the vehicle or for refrigerating the lading.</p>				
Permit Amounts for Cryogenic Fluids				
Type of Cryogenic Fluid	Inside Building (gallons)	Outside Building (gallons)		
Flammable	More than 1	60		
Inert	60	500		
Oxidizing (includes oxygen)	10	50		
Physical or health hazard not indicated above	Any Amount	Any Amount		
For SI: 1 gallon = 3.785 L.				
Cutting and welding. An operational permit is required to conduct cutting or welding operations within the jurisdiction.				
Dry cleaning plants. An operational permit is required to engage in the business of dry cleaning or to change to a more hazardous cleaning solvent used in existing dry cleaning equipment.				
Exhibits and trade shows. An operational permit is required to operate exhibits and trade shows.				
Explosives. An operational permit is required for the manufacture, storage, handling, sale or use of any quantity of explosive, explosive material, fireworks, or pyrotechnic special effects within the scope of Chapter 33.				

<p>Fire hydrants and valves. An operational permit is required to use or operate fire hydrants or valves intended for fire suppression purposes that are installed on water systems and accessible to a fire apparatus access road that is open to or generally used by the public.</p> <p>Exception: An operational permit is not required for authorized employees of the water company that supplies the system or the fire department to use or operate fire hydrants or valves.</p>			
<p>Flammable and combustible liquids. An operational permit is required:</p> <ol style="list-style-type: none"> 1. To use or operate a pipeline for the transportation within facilities of flammable or combustible liquids. This requirement shall not apply to the offsite transportation in pipelines regulated by the Department of Transportation (DOTn) (see §3501.1.2) nor does it apply to piping systems (see §3503.6). 2. To store, handle or use Class I liquids in excess of 5 gallons (19 L) in a building or in excess of 10 gallons (37.9 L) outside of a building, except that a permit is not required for the following: 			
<ol style="list-style-type: none"> 2.1. The storage or use of Class I liquids in the fuel tank of a motor vehicle, aircraft, motorboat, mobile power plant or mobile heating plant, unless such storage, in the opinion of the fire official, would cause an unsafe condition. 2.2. The storage or use of paints, oils, varnishes or similar flammable mixtures when such liquids are stored for maintenance, painting or similar purposes for a period of not more than 30 days. 			
<ol style="list-style-type: none"> 3. To store, handle or use Class II or Class IIIA liquids in excess of 25 gallons (95 L) in a building or in excess of 60 gallons (227 L) outside a building, except for fuel oil used in connection with oil-burning equipment. 4. To remove Class I or Class II liquids from an underground storage tank used for fueling motor vehicles by any means other than the approved, stationary on-site pumps normally used for dispensing purposes. 5. To operate tank vehicles, equipment, tanks, plants, terminals, wells, fuel-dispensing stations, refineries, distilleries and similar facilities where flammable and combustible liquids are produced, processed, transported, stored, dispensed or used. 6. To install, alter, remove, abandon, place temporarily out of service (for more than 90 days) or otherwise dispose of an underground, protected above-ground or above-ground flammable or combustible liquid tank. 7. To change the type of contents stored in a flammable or combustible liquid tank to a material that poses a greater hazard than that for which the tank was designed and constructed. 8. To manufacture, process, blend or refine flammable or combustible liquids. 			

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<p>Floor finishing. An operational permit is required for floor finishing or surfacing operations exceeding 350 square feet (33 m²) using Class I or Class II liquids.</p>			
<p>Fruit and crop ripening. An operational permit is required to operate a fruit- or crop-ripening facility or conduct a fruit-ripening process using ethylene gas.</p>			
<p>Fumigation and thermal insecticidal fogging. An operational permit is required to operate a business of fumigation or thermal insecticidal fogging and to maintain a room, vault or chamber in which a toxic or flammable fumigant is used.</p>			
<p>Hazardous materials. An operational permit is required to store, transport on site, dispense, use or handle hazardous materials in excess of the amounts listed below.</p>			
<p>Permit Amounts for Hazardous Materials</p>			
<p>Type of Material</p>	<p>Amount</p>		
<p>Combustible liquids</p>	<p>See flammable and combustible liquids</p>		
<p>Corrosive materials</p>			
<p>Gases</p>	<p>See compressed gases</p>		
<p>Liquids</p>	<p>55 gallons</p>		
<p>Solids</p>	<p>1000 pounds</p>		
<p>Explosive materials</p>	<p>See explosives</p>		
<p>Flammable materials</p>			
<p>Gases</p>	<p>See compressed gases</p>		
<p>Liquids</p>	<p>See flammable and combustible liquids</p>		
<p>Solids</p>	<p>100 pounds</p>		
<p>Highly toxic materials</p>			
<p>Gases</p>	<p>See compressed gases</p>		
<p>Liquids</p>	<p>Any Amount</p>		
<p>Solids</p>	<p>Any Amount</p>		
<p>Oxidizing materials</p>			
<p>Gases</p>	<p>See compressed gases</p>		
<p>Liquids</p>			
<p>Class 4</p>	<p>Any Amount</p>		
<p>Class 3</p>	<p>1 gallon</p>		
<p>Class 2</p>	<p>10 gallons</p>		
<p>Class 1</p>	<p>55 gallons</p>		
<p>Solids</p>			
<p>Class 4</p>	<p>Any Amount</p>		
<p>Class 3</p>	<p>10 pounds</p>		
<p>Class 2</p>	<p>100 pounds</p>		
<p>Class 1</p>	<p>500 pounds</p>		

<p>Organic peroxides</p> <p>Liquids</p> <p>Class I Any Amount</p> <p>Class II Any Amount</p> <p>Class III 1 gallon</p> <p>Class IV 2 gallons</p> <p>Class V No Permit Required</p> <p>Solids</p> <p>Class I Any Amount</p> <p>Class II Any Amount</p> <p>Class III 10 pounds</p> <p>Class IV 20 pounds</p> <p>Class V No Permit Required</p> <p>Pyrophoric materials</p> <p>Gases See compressed gases</p> <p>Liquids Any Amount</p> <p>Solids Any Amount</p> <p>Toxic materials</p> <p>Gases See compressed gases</p> <p>Liquids 10 gallons</p> <p>Solids 100 pounds</p> <p>Unstable (reactive) materials</p> <p>Liquids</p> <p>Class 4 Any Amount</p> <p>Class 3 Any Amount</p> <p>Class 2 5 gallons</p> <p>Class 1 10 gallons</p> <p>Solids</p> <p>Class 4 Any Amount</p> <p>Class 3 Any Amount</p> <p>Class 2 50 pounds</p> <p>Class 1 100 pounds</p> <p>Water-reactive Materials</p> <p>Liquids</p> <p>Class 3 Any Amount</p> <p>Class 2 5 gallons</p> <p>Class 1 55 gallons</p> <p>Solids</p> <p>Class 3 Any Amount</p> <p>Class 2 50 pounds</p> <p>Class 1 500 pounds</p> <p>For SI: 1 gallon = 3.785 L, 1 pound = 0.454 kg.</p>			
<p>HPM facilities. An operational permit is required to store, handle</p>			

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<p>or use hazardous production materials.</p>			
<p>High piled storage. An operational permit is required to use a building or portion thereof as a high-piled storage area exceeding 500 square feet (46 m²).</p>			
<p>Hot work operations. An operational permit is required for hot work including, but not limited to:</p> <ol style="list-style-type: none"> 1. Public exhibitions and demonstrations where hot work is conducted. 2. Use of portable hot work equipment inside a structure. <p>Exception: Work that is conducted under a construction permit.</p> <ol style="list-style-type: none"> 3. Fixed-site hot work equipment such as welding booths. 4. Hot work conducted within a hazardous fire area. 5. Application of roof coverings with the use of an open-flame device. 6. When approved, the fire official shall issue a permit to carry out a Hot Work Program. This program allows approved personnel to regulate their facility's hot work operations. The approved personnel shall be trained in the fire safety aspects denoted in this chapter and shall be responsible for issuing permits requiring compliance with the requirements found in this chapter. These permits shall be issued only to their employees or hot work operations under their supervision. 			
<p>Industrial ovens. An operational permit is required for operation of industrial ovens regulated by Chapter 21.</p>			
<p>Lumber yards and woodworking plants. An operational permit is required for the storage or processing of lumber exceeding 100,000 board feet (8,333 ft³) (236 m³).</p>			
<p>Liquid- or gas-fueled vehicles or equipment in assembly buildings. An operational permit is required to display, operate or demonstrate liquid- or gas-fueled vehicles or equipment in assembly buildings.</p>			
<p>LP-gas. An operational permit is required for:</p> <ol style="list-style-type: none"> 1. Storage and use of LP-gas. <p>Exception: An operational permit is not required for individual containers with a 500-gallon (1893 L) water capacity or less serving occupancies in Group R-3.</p> <ol style="list-style-type: none"> 2. Operation of cargo tankers that transport LP-gas. 			
<p>Magnesium. An operational permit is required to melt, cast, heat treat or grind more than 10 pounds (4.54 kg) of magnesium.</p>			
<p>Miscellaneous combustible storage. An operational permit is required to store in any building or upon any premises in excess of 2,500 cubic feet (71 m³) gross volume of combustible empty packing cases, boxes, barrels or similar containers, rubber tires, rubber, cork or similar combustible material.</p>			

<p>Open burning. An operational permit is required for the kindling or maintaining of an open fire or a fire on any public street, alley, road, or other public or private ground. Instructions and stipulations of the permit shall be adhered to.</p> <p>Exception: Recreational fires.</p>			
<p>Open flames and candles. An operational permit is required to remove paint with a torch; use a torch or open-flame device in a hazardous fire area; or to use open flames or candles in connection with assembly areas, dining areas of restaurants or drinking establishments.</p>			
<p>Organic coatings. An operational permit is required for any organic-coating manufacturing operation producing more than 1 gallon (4 L) of an organic coating in one day.</p>			
<p>Assembly/educational. An operational permit is required to operate a place of assembly /educational occupancy.</p>			
<p>Private fire hydrants. An operational permit is required for the removal from service, use or operation of private fire hydrants.</p> <p>Exception: An operational permit is not required for private industry with trained maintenance personnel, private fire brigade or fire departments to maintain, test and use private hydrants.</p>			
<p>Pyrotechnic special effects material. An operational permit is required for use and handling of pyrotechnic special effects material.</p>			
<p>Pyroxylin plastics. An operational permit is required for storage or handling of more than 25 pounds (11 kg) of cellulose nitrate (pyroxylin) plastics and for the assembly or manufacture of articles involving pyroxylin plastics.</p>			
<p>Refrigeration equipment. An operational permit is required to operate a mechanical refrigeration unit or system regulated by Chapter 6.</p>			
<p>Repair garages and service stations. An operational permit is required for operation of repair garages and automotive, marine and fleet service stations.</p>			
<p>Rooftop heliports. An operational permit is required for the operation of a rooftop heliport.</p>			
<p>Spraying or dipping. An operational permit is required to conduct a spraying or dipping operation utilizing flammable or combustible liquids or the application of combustible powders regulated by Chapter 15.</p>			
<p>Storage of scrap tires and tire byproducts. An operational permit is required to establish, conduct or maintain storage of scrap tires and tire byproducts that exceeds 2,500 cubic feet (71 m³) of total volume of scrap tires and for indoor storage of tires and tire byproducts.</p>			

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<p>Temporary membrane structures and tents. An operational permit is required to operate an air-supported temporary membrane structure or a tent.</p> <p>Exceptions:</p> <ol style="list-style-type: none"> 1. Tents used exclusively for recreational camping purposes. 2. Tents and air-supported structures that cover an area of 900 square feet (84 m²) or less, including all connecting areas or spaces with a common means of egress or entrance and with an occupant load of 50 or less persons. 			
<p>Tire-rebuilding plants. An operational permit is required for the operation and maintenance of a tire-rebuilding plant.</p>			
<p>Waste handling. An operational permit is required for the operation of wrecking yards, junk yards and waste material-handling facilities.</p>			
<p>Wood products. An operational permit is required to store chips, hogged material, lumber or plywood in excess of 200 cubic feet (6 m³).</p>			

D. 107.3. Application for permit: Application for a permit shall be made on forms prescribed by the fire official.

E. 107.4. Issuance of permits: Before a permit is issued, the fire official shall make such inspections or tests as are necessary to assure that the use and activities for which application is made comply with the provisions of this code.

F. 107.5. Conditions of permit: A permit shall constitute permission to store or handle materials or to conduct processes in accordance with the SFPC, and shall not be construed as authority to omit or amend any of the provisions of this code. Permits shall remain in effect until revoked or for such period as specified on the permit. Permits are not transferable.

G. 107.5.1. Special conditions for the State Fire Marshal's Office: Permits issued by the State Fire Marshal's Office for the use of explosives in special operations or under emergency conditions shall be valid for one week from the date of issuance and shall not be renewable.

H. 107.6. State Fire Marshal: Permits will not be required by the State Fire Marshal except for the manufacturing, storage, handling, use, and sale of explosives in localities not enforcing the SFPC, and for the display of fireworks on state-owned property.

Exception: Such permits shall not be required for the storage of explosives or blasting agents by the Virginia Department of State Police provided notification to the State Fire Marshal is made annually by the Chief Arson Investigator listing all storage locations within areas where enforcement is provided by the State Fire Marshal's office.

I. 107.7. Annual: The enforcing agency may issue annual permits for the manufacturing, storage, handling, use, or sales of explosives to any state regulated public utility.

J. 107.8. Approved plans: Plans approved by the fire official are approved with the intent that they comply in all respects to this code. Any omissions or errors on the plans do not relieve the applicant of complying with all applicable requirements of this code.

K. 107.9. Posting: Issued permits shall be kept on the premises designated therein at all times and shall be readily available for inspection by the fire official.

L. 107.10. Suspension of permit: A permit shall become invalid if the authorized activity is not commenced within six months after issuance of the permit, or if the authorized activity is suspended or abandoned for a period of six months after the time of commencement.

M. 107.11. Revocation of permit: The fire official may revoke a permit or approval issued under the SFPC if conditions of the permit have been violated, or if the approved application, data or plans contain misrepresentation as to material fact.

N. 107.12. Local permit fees: Fees may be levied by the local governing body in order to defray the cost of enforcement and appeals under the SFPC.

O. 107.13. State explosives, blasting agents and fireworks permit fees: Fees for permits issued by the State Fire Marshal's office for the storage, use, sale or manufacture of explosives or blasting agents, and for the display of fireworks on state-owned property shall be as follows:

1. \$100 per year per magazine to store explosives and blasting agents.

- 2. \$150 per year per city or county to use explosives and blasting agents.
- 3. \$150 per year to sell explosives and blasting agents.
- 4. \$200 per year to manufacture explosives, blasting agents and fireworks.
- 5. \$300 per day for fireworks, pyrotechnics or proximate audience displays conducted in any state-owned building and \$150 per day for each subsequent day.
- 6. \$200 per day for fireworks, pyrotechnics or proximate audience displays conducted out-of-doors on any state-owned property and \$150 per day for each subsequent day.
- 7. \$75 per event for the use of explosives in special operations or emergency conditions.

P. 107.14 State annual inspection permit fees. Annual fees for inspection permits issued by the State Fire Marshall's office for the inspection of buildings shall be as follows:

- 1. Nightclubs.
 - 1.1. \$350 for occupant load of 100 or less.
 - 1.2. \$450 for occupant load of 101 to 200.
 - 1.3. \$500 for occupant load of 201 to 300.
 - 1.4. \$500 plus \$50 for each 100 occupants where occupant loads exceed 300.
- 2. Private ~~schools (kindergarten through 12th grade) and private~~ college dormitories with or without assembly areas. If containing assembly areas, such assembly areas are not included in the computation of square footage.

- 2.1. \$150 for 3500 square feet or less.
- 2.2. \$200 for greater than 3500 square feet up to 7000 square feet.
- 2.3. \$250 for greater than 7000 square feet up to 10,000 square feet.
- 2.4. \$250 plus \$50 for each additional 3000 square feet where square footage exceeds 10,000.

3. Assembly areas that are part of private ~~schools (kindergarten through 12th grade) or private~~ college dormitories.

- 3.1. \$50 for 10,000 square feet or less provided the assembly area is within or attached to a ~~school or~~ dormitory building.
- 3.2. \$100 for greater than 10,000 square feet up to 25,000 square feet provided the assembly area is within or attached to a ~~school or~~ dormitory building, such as gymnasiums, auditoriums or cafeterias.

3.3. \$100 for up to 25,000 square feet provided the assembly area is in a separate or separate buildings such as gymnasiums, auditoriums or cafeterias.

3.4. \$150 for greater than 25,000 square feet for assembly areas within or attached to a ~~school or~~ dormitory building or in a separate or separate buildings such as gymnasiums, auditoriums or cafeterias.

4. Hospitals.

- 4.1. \$300 for 1 to 50 beds.
- 4.2. \$400 for 51 to 100 beds.
- 4.3. \$500 for 101 to 150 beds.
- 4.4. \$600 for 151 to 200 beds.
- 4.5. \$600 plus \$100 for each additional 100 beds where the number of beds exceeds 200.

Exception: Annual inspection permits for any building or groups of buildings on the same site may not exceed \$2500.

Q. 107.15. Fee schedule: The local governing body may establish a fee schedule. The schedule shall incorporate unit rates, which may be based on square footage, cubic footage, estimated cost of inspection or other appropriate criteria.

R. 107.16. Payment of fees: A permit shall not be issued until the designated fees have been paid.

Exception: The fire official may authorize delayed payment of fees.

VA.R. Doc. No. R08-1376; Filed July 23, 2008, 12:08 p.m.

◆ ————— ◆

TITLE 16. LABOR AND EMPLOYMENT

DEPARTMENT OF LABOR AND INDUSTRY

Final Regulation

REGISTRAR'S NOTICE: The Department of Labor and Industry 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 Labor and Industry will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **16VAC15-30. Virginia Rules and Regulations Declaring Hazardous Occupations (amending 16VAC15-30-40).**

Statutory Authority: §40.1-100 of the Code of Virginia.

Regulations

Effective Date: September 18, 2008.

Agency Contact: Wendy Inge, Director, Division of Labor and Employment Law, Department of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, VA 23219, telephone (804) 786-3224, FAX (804) 371-2324, TTY (804) 786-2376, or email wendy.inge@doli.virginia.gov.

Summary:

In conformance with Chapter 552 of the 2008 Act of Assembly, this amendment makes school bus driving a prohibited occupation for 16- and 17-year-old minors.

16VAC15-30-40. Motor vehicle occupations.

Minors under the age of 18 shall not be employed as drivers or helpers on trucks or commercial vehicles of more than two axles. ~~(The provisions of this prohibited occupation shall not apply to 16 year old and 17 year old minors employed as drivers of school buses.)~~

VA.R. Doc. No. R08-1385; Filed July 22, 2008, 2:46 p.m.

◆ **TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING**

BOARD OF HEALTH PROFESSIONS

Forms

NOTICE: The following forms have been filed by the Board of Health Professions. The forms are available for public inspection at the Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, Virginia 23233, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219. Copies of the forms may be obtained from Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

Title of Regulation: **18VAC75-20. Regulations Governing Practitioner Self-Referral.**

FORMS (18VAC75-20)

Application for an Advisory Opinion - Virginia Self-Referral Act/With Certification (rev. ~~2/94~~ 7/08).

Application for an Exception to the Prohibitions of the Virginia Practitioner Self-Referral Act/With Certification (rev. ~~2/94~~ 7/08).

Practitioner Listing (rev. ~~3/99~~ 7/08).

VA.R. Doc. No. R08-1536; Filed July 29, 2008, 9:37 a.m.

DEPARTMENT OF HEALTH PROFESSIONS

Final Regulation

REGISTRAR'S NOTICE: The following model public participations are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

Titles of Regulations: **18VAC76-30. Public Participation Guidelines (repealing 18VAC76-30-10 through 18VAC76-30-120).**

18VAC76-31. Public Participation Guidelines (adding 18VAC76-31-10 through 18VAC76-31-110).

Statutory Authority: §§2.2-4007.02 and 54.1-2505 of the Code of Virginia.

Effective Date: September 17, 2008.

Agency Contact: Elaine J. Yeatts, Senior Policy Analyst, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4688, FAX (804) 527-4475, or email elaine.yeatts@dhp.virginia.gov.

Summary:

The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.

This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) proving that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.

CHAPTER 31 PUBLIC PARTICIPATION GUIDELINES

Part I Purpose and Definitions

18VAC76-31-10. Purpose.

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

18VAC76-31-20. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Part II Notification of Interested Persons

18VAC76-31-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be

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notified electronically, receive documents through a postal carrier, or be deleted from the list.

18VAC76-31-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 18VAC76-31-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a re-proposed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.
3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III Public Participation Procedures

18VAC76-31-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).
2. For a minimum of 60 calendar days following the publication of a proposed regulation.
3. For a minimum of 30 calendar days following the publication of a re-proposed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

18VAC76-31-60. Petition for rulemaking.

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;
2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and
3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

18VAC76-31-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or

when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

18VAC76-31-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or

3. The agency determines that resolution of a controversy is unlikely.

18VAC76-31-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

18VAC76-31-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;

2. The Governor directs the agency to hold a public hearing; or

3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

18VAC76-31-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and

2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R08-1478; Filed July 29, 2008, 9:37 a.m.

BOARD OF NURSING

Final Regulation

REGISTRAR'S NOTICE: The following model public participations are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

Titles of Regulations: **18VAC90-10. Public Participation Guidelines (repealing 18VAC90-10-10 through 18VAC90-10-120).**

18VAC90-11. Public Participation Guidelines (adding 18VAC90-11-10 through 18VAC90-11-110).

Statutory Authority: §§2.2-4007.02 and 54.1-2400 of the Code of Virginia.

Effective Date: September 17, 2008.

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Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Summary:

The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.

This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.

CHAPTER 11 PUBLIC PARTICIPATION GUIDELINES

Part I Purpose and Definitions

18VAC90-11-10. Purpose.

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

18VAC90-11-20. Definitions.

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

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

"Agency" means the Board of Nursing, which is the unit of state government empowered by the agency's basic law to

make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

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

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

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

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

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

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

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

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

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

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

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

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies.

which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

Part II Notification of Interested Persons

18VAC90-11-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

18VAC90-11-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 18VAC90-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.
3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III Public Participation Procedures

18VAC90-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final

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adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

18VAC90-11-60. Petition for rulemaking.

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;
2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and
3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

18VAC90-11-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

18VAC90-11-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or
3. The agency determines that resolution of a controversy is unlikely.

18VAC90-11-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

18VAC90-11-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;
2. The Governor directs the agency to hold a public hearing; or
3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

18VAC90-11-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their

effectiveness, efficiency, necessity, clarity, and cost of compliance; and

2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R08-1481; Filed July 29, 2008, 9:37 a.m.

BOARD OF OPTOMETRY

Forms

NOTICE: The following forms have been filed by the Board of Optometry. The forms are available for public inspection at the Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, Virginia 23233, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219. Copies of the forms may be obtained from Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

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

FORMS (18VAC105-20)

Application Instructions for Licensure/TPA Certification (rev. ~~3/05~~) 7/08).

Form A, Application for a License to Practice Optometry or TPA Certification (rev. ~~3/05~~) 7/08).

Diagnostic Pharmaceutical Agents Endorsement Application (rev. ~~11/02~~) 7/08).

Professional Designation Application (rev. ~~3/04~~) 7/08).

Professional Designation Application Letter (rev. 3/05).

Application for Reinstatement (rev. ~~7/03~~) 7/08).

~~TPA Reinstatement Application (rev. 12/04).~~

~~License Renewal Notice and Application, 0601, Optometrist (rev. 12/02).~~

~~License Renewal Notice and Application, 0603, Professional Designation (rev. 12/02).~~

Form B, Licensure Verification (~~eff. 12/04~~) (rev. 7/08).

Application for Registration for Volunteer Practice (~~eff. 12/02~~) (9/07).

Sponsor Certification for Volunteer Registration (~~eff. 01/03~~) (9/07).

~~Graduate Optometric Programs Form C, Approved and Postgraduate TPA Graduate Optometric Programs Approved (eff. 2/00) (12/06).~~

Form D, Certificate of Training (rev. ~~12/04~~) 7/08).

VA.R. Doc. No. R08-1538; Filed July 29, 2008, 9:37 a.m.

BOARD OF PHARMACY

Forms

NOTICE: The following forms have been filed by the Board of Pharmacy. The forms are available for public inspection at the Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, Virginia 23233, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219. Copies of the forms may be obtained from Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

Title of Regulation: 18VAC110-20. Regulations Governing the Practice of Pharmacy.

18VAC110-30. Regulations for Practitioners of the Healing Arts to Sell Controlled Substances.

18VAC110-50. Regulations Governing Wholesale Distributors, Manufacturers, and Warehouse.

FORMS (18VAC110-20)

Application for Registration as a Pharmacy Intern (rev. ~~6/04~~) 8/07).

Affidavit of Practical Experience, Pharmacy Intern (rev. ~~12/02~~) 8/07).

Application for Licensure as a Pharmacist by Examination (rev. ~~10/02~~) 8/07).

Instructions for Reinstating or Reactivating a Pharmacist License (rev. 11/07).

Application to Reinstate or Reactivate a Pharmacist License (rev. 10/02) 11/07).

Application for Approval of a Continuing Education Program (rev. ~~11/02~~) 8/07).

Application for Approval of ACPE Pharmacy School Course(s) for Continuing Education Credit (rev. ~~11/02~~) 8/07).

Application for License to Dispense Drugs (permitted physician) (rev. ~~10/02~~) 8/07).

Application for a Pharmacy Permit (rev. ~~11/02~~) 8/07).

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Application for a Nonresident Pharmacy Registration (rev. ~~10/02~~ 7/08).

Application for a Permit as a Medical Equipment Supplier (rev. ~~10/02~~ 8/07).

Application for a Controlled Substances Registration Certificate (rev. ~~3/05~~ 8/07).

~~Renewal Notice and Application, 0201 Pharmacy (rev. 12/02).~~

~~Renewal Notice and Application, 0202 Pharmacist (rev. 12/02).~~

~~Renewal Notice and Application, 0205 Permitted Physician (rev. 12/02).~~

~~Renewal Notice and Application, 0206 Medical Equipment Supplier (rev. 12/02).~~

~~Renewal Notice and Application, 0209 Humane Society (rev. 12/02).~~

~~Renewal Notice and Application, 0214 Non Resident Pharmacy (rev. 12/02).~~

~~Renewal Notice and Application, 0220 Business CSR (rev. 12/02).~~

~~Renewal Notice and Application, 0228 Practitioner CSR (rev. 12/02).~~

~~Application to Reinstate a Pharmacist License (rev. 11/02).~~

Application for a Permit as a Humane Society (rev. ~~10/02~~ 8/07).

Application for Registration as a Pharmacy Intern for Graduates of a Foreign College of Pharmacy (rev. ~~6/04~~ 8/07).

Closing of a Pharmacy (rev. ~~3/03~~ 8/07).

Application for Approval of a Robotic Pharmacy System (rev. ~~11/02~~ 8/07).

~~Notice of Inspection Fee Due for Required for Approval of a Robotic Pharmacy System (rev. 11/02) 8/07.~~

Application for Approval of an Innovative (Pilot) Program (rev. ~~11/02~~ 8/07).

~~Pharmacy Technician Application for Registration as a Pharmacy Technician Instructions and Application (12/02) (rev. 7/08).~~

~~Instructions for Reinstating a Pharmacy Technician Registration (rev. 11/07).~~

~~Application to Reinstate a Pharmacy Technician Registration (rev. 11/07).~~

Application for Approval of a Pharmacy Technician Training Program (~~12/02~~ rev. 8/07).

Application for Registration for Volunteer Practice (~~eff. 12/02~~ rev. 8/07).

Sponsor Certification for Volunteer Registration (~~eff. 1/03~~ rev. 8/07).

Preceptor Verification Form (rev. 8/07).

Application for Reinstatement of Registration as a Pharmacy Intern (eff. 9/07).

Affidavit for Limited-Use Pharmacy Technician (rev. 8/07).

Limited-Use Pharmacy Technician Registration Instructions and Application (rev. 7/08).

Application for Registration as a Limited-Use Pharmacy Technician (eff. 7/08).

FORMS (18VAC110-30)

Application for a License to Sell Controlled Substances by a Practitioner of the Healing Arts (rev. ~~8/04~~ 8/07).

~~Renewal Notice (rev. 4/05).~~

~~License Renewal Notice and Application (rev. 4/05).~~

FORMS (18VAC110-50)

Application for a Permit as a Restricted Manufacturer (rev. ~~9/05~~ 8/07).

Application for a Permit as a Nonrestricted Manufacturer (rev. ~~9/05~~ 8/07).

Application for a Permit as a Warehouser (rev. ~~9/05~~ 8/07).

Application for a License as a Wholesale Distributor (rev. ~~9/05~~ 8/07).

Application for a Nonresident Wholesale Distributor Registration (rev. ~~9/05~~ 8/07).

Application for a License as a Wholesale Distributor -- Limited Use for Distribution of Medical Gases Only (rev. ~~9/05~~ 8/07).

~~Renewal Notice and Application, 0207 Restricted Manufacturer (rev. 12/02).~~

~~Renewal Notice and Application, 0208 Nonrestricted Manufacturer (rev. 12/02).~~

~~Renewal Notice and Application, 0215 Wholesale Distributor (rev. 12/02).~~

~~Renewal Notice and Application, 0216 Warehouser (rev. 12/02).~~

~~Renewal Notice and Application, 0219 Nonresident Wholesale Distributor (rev. 12/02).~~

VA.R. Doc. No. R08-1533; Filed July 29, 2008, 9:37 a.m.

BOARD OF SOCIAL WORK

CHAPTER 11
PUBLIC PARTICIPATION GUIDELINES

Final Regulation

REGISTRAR'S NOTICE: The following model public participations are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

Titles of Regulations: **18VAC140-10. Public Participation Guidelines (repealing 18VAC140-10-10 through 18VAC140-10-120).**

18VAC140-11. Public Participation Guidelines (adding 18VAC140-11-10 through 18VAC140-11-110).

Statutory Authority: §§2.2-4007.02 and 54.1-2400 of the Code of Virginia.

Effective Date: September 17, 2008.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4441, FAX (804) 527-4435, or email evelyn.brown@dhp.virginia.gov.

Summary:

The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.

This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) proving that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.

Part I

Purpose and Definitions

18VAC140-11-10. Purpose.

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

18VAC140-11-20. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Part II

Notification of Interested Persons

18VAC140-11-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

18VAC140-11-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 18VAC140-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).

2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.

3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III

Public Participation Procedures

18VAC140-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

18VAC140-11-60. Petition for rulemaking.

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;
2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and
3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

18VAC140-11-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

18VAC140-11-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or

3. The agency determines that resolution of a controversy is unlikely.

18VAC140-11-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

18VAC140-11-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;

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2. The Governor directs the agency to hold a public hearing; or

3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

18VAC140-11-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and

2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R08-1492; Filed July 29, 2008, 9:36 a.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

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: 20VAC5-302. **Filing Requirements in Support of Applications for Authority to Construct and Operate an Electric Generating Facility (amending 20VAC5-302-10, 20VAC5-302-20, 20VAC5-302-25, 20VAC5-302-35).**

Statutory Authority: §§12.1-13, 56-234.3 and 56-265.2 of the Code of Virginia.

Public Hearing Information: A public hearing will be held upon request.

Public Comments: Public comments may be submitted until 5 p.m. on September 26, 2008.

Agency Contact: Cody Walker, Assistant Director, Division of Energy Regulation, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9611, FAX (804) 371-9350, or email cody.walker@scc.virginia.gov.

Summary:

The State Corporation Commission (commission) proposes to revise its existing rules governing applications to construct and operate electric generating facilities (generation rules or rules). Legislation enacted by the 2007 and 2008 Sessions of the Virginia General Assembly is largely prompting the commission's decision to propose changes in its rules. The current rules are set forth in Chapter 302 (5VAC20-302) within Title 20 of the Virginia Administrative Code.

Amendments proposed to the generation rules establish filing requirements Virginia's electric utilities must satisfy in establishing need for proposed, new generation facilities to be constructed in Virginia. The information includes an analysis of load and generating capacity reserve forecast information that demonstrates the need for the plant in the in-service year proposed. The proposed amendments further provide that the construction in Virginia of electric generating facilities with rated capacities of 5 MW or less may be undertaken without complying with the full filing requirements currently set forth in the generation rules. Instead, persons desiring to construct such facilities are required to (i) submit a letter to the commission's Director of the Division of Energy Regulation stating the location, size and fuel type of the facility, and (ii) comply with all other requirements of federal, state and local law.

AT RICHMOND, JULY 25, 2008

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUE-2008-00066

Ex Parte: In the matter of revising the rules of the State Corporation Commission governing applications to construct and operate electric generating facilities

ORDER FOR NOTICE AND COMMENT

The rules of the State Corporation Commission ("Commission) in Chapter 302 (20 VAC 5-302-10 et seq.) within Title 20 of the Virginia Administrative Code, govern

applications to construct and operate electric generating facilities in the Commonwealth of Virginia ("Generation Rules" or "Rules").¹ The Generation Rules, *inter alia*, establish the framework for persons "planning to construct electric generating facilities and incidental or associated facilities in the Commonwealth of Virginia and who must apply for approval from the State Corporation Commission ('Commission') pursuant to §§ 56-46.1, and 56-580 D of the Code of Virginia. . . ." 20 VAC 5-302-10. The Rules require, for example, information about a proposed electric generation facility's owners, the proposed site for the facility, technical information concerning the facility, economic and environmental impact of the facility if constructed, etc.

The Generation Rules further distinguish between the general information, electric generating facility information and documents to be included in the application for electric generating facilities greater than 50 MW in capacity (20 VAC 5-302-20), and those proposed facilities that are less than 50 MW (20 VAC 5-302-25). Additionally, the current provisions of 20 VAC 5-302-25 require information mainly related to market power, from incumbent electric utilities and their affiliates.

As discussed below, the current Rules reflect the Virginia General Assembly's efforts, beginning in 1999, to restructure Virginia's electric utility industry by introducing market competition to the provision of electric generating services to Virginia's retail electric customers. Moreover, the 1999 Virginia Electric Utility Restructuring Act (SB 1269, Chapter 411 of the 1999 Acts of Assembly) ("Restructuring Act")² anticipated that in Virginia's restructured electricity market, generation additions needed to serve load in the Commonwealth would be market driven, i.e., nonutility generators and incumbent utilities, alike, would construct generation in response to market signals. Neither utilities nor non-utilities would be required to establish "convenience and necessity" as a prerequisite to Commission approval of any generation facility proposed for construction and operation in the Commonwealth.

Specifically, § 56-580 D³ added to the Code by the Restructuring Act had effectively rendered all new generation "merchant plants" by drawing no distinction between their construction by utilities or nonutilities, a development underscored by the elimination in § 56-579 (also added by the Restructuring Act) of eminent domain's exercise in conjunction with generation plants constructed after the January 1, 2002.⁴ As evident from the statutory language enacted in 1999, "need" was not a pertinent issue before the Commission in generation plant certificate cases filed with the Commission pursuant to § 56-580 D subsequent to 1999 and prior to SB 1416's enactment in 2007.

This rulemaking docket is prompted by the enactment of SB 1416⁵ in the 2007 Session of the Virginia General Assembly. SB 1416 brought to a close the legislative electric utility

restructuring initiative discussed above. This legislation (SB 1416) substantially re-wrote the regulatory framework for Virginia's jurisdictional utilities by introducing a new, detailed form of regulation for Virginia's electric utilities. Pertinent to the Generation Rules, SB 1416 amended § 56-580 D to require that Virginia's incumbent electric utilities, once again, establish public convenience and necessity, or "need" as a prerequisite to the Commission's approval and certification of any electric generation facility proposed by such utilities for construction and operation in the Commonwealth.⁶

Consequently, the Commission must now revise its current Generating Rules to address and integrate need-related information to be furnished by such utilities. The necessity of such information is further underscored by the 2008 Virginia General Assembly's enactment of SB 311, Chapter 476 of the 2008 Acts of Assembly.

SB 311 established a mandatory integrated resource planning ("IRP") requirement for Virginia's jurisdictional electric utilities.⁷ IRPs, as established by this legislation, provide forecasts of electric utilities' expected load obligations (projected over a 15 year period), and the utilities' plans to meet these load obligations over that period through supply side and demand side resources. According to SB 311, the IRPs are intended to "promote reasonable prices, reliable service, energy independence and environmental responsibility." § 56-597. Virginia's electric utilities will file their first IRPs by September 1, 2009, with IRPs to be updated biennially thereafter. § 56-599.

In light of the foregoing, and to initiate this proceeding, the Commission's Staff has prepared proposed amendments to the Commission's Generation Rules ("Proposed Amendments"). The Proposed Amendments (appended to this Order) require, *inter alia*, that Virginia's electric utilities furnish in conjunction with generation certificate applications (i) "[L]oad and generating capacity reserve forecast information that demonstrates the need for the plant in the in-service year proposed," and (ii) "[E]conomic studies that compare the selected alternative with other options considered, including sensitivity analyses and production costing simulations of the applicant's overall generating resources that demonstrate that the selected option is the best alternative." Both requirements—as well as additional ones all set forth in proposed amendments to 20 VAC 5-302-25—thus relate to the newly-reestablished "need" showings required of Virginia's regulated, electric utilities; they also relate to the policy objectives (quoted above) now established by Virginia's newly-enacted IRP statutes.

The Proposed Amendments also address another issue. As a general matter, information required in connection with applications for certification of facilities with capacities of under 50 MW is less extensive than that required for all units above that capacity (i.e., greater than 50 MW); this reflects

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Commission authority—in place since 1999—to streamline Commission generation certification processes for generation facilities under 50 MW. § 56-578 D of the Code.⁸ The Commission's current Generation Rules require *all* electric generation facilities proposed for construction and operation in the Commonwealth, and regardless of size, to seek certification under these rules. As a result, even the smallest of generation facilities could be subject to the Generation Rules. For example, solar arrays designed for installation in residential settings and having capacities of less than 5 kW, could—under a narrow reading of the Commission's Generation Rules—be required to seek certification from the Commission thereunder.

As the Commonwealth's interest in developing alternative energy sources (frequently of low capacity) continues to grow,⁹ the Commission does not believe that the Generation Rules should serve as an impediment to their development. Moreover, "streamlining" this Commission's review of small generation facilities under 50 MW has been the policy of the Commonwealth since the enactment of § 56-578 D as part of the Restructuring Act. Consequently, and as a further exercise of its authority under § 56-578 D, the Commission's Proposed Amendments in this docket also expedite review of electric generation facilities under 5 MW in capacity proposed for construction and operation in Virginia.

Thus, the Proposed Amendments also amend 20 VAC 5-302-25 (rule governing facilities under 50 MW), to provide that the construction of electric generating facilities with a rated capacity of 5 MW or less may be undertaken without complying with the detailed filing requirements established by Chapter 302. Instead, persons desiring to construct electric generation facilities under 5 MW are required to (i) submit a letter to the Commission's Director of the Division of Energy Regulation stating the location, size and fuel type of the facility, and (ii) comply with all other requirements of federal, state and local law.

Finally, the Proposed Amendments also make grammatical and clarifying amendments throughout the Rules.

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that a proceeding should be established to revise its existing Generation Rules. Accordingly, we will direct that notice of the Proposed Amendments be given to the public and that interested persons be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Amendments.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUE-2008-00066.

(2) The Commission's Division of Information Resources shall forward a copy of this Order to the Registrar of Regulation for publication in the Virginia Register.

(3) On or before August 15, 2008, the Commission's Division of Information Resources shall publish the following notice as classified advertising in newspapers of general circulation throughout the Commonwealth of Virginia.

NOTICE TO THE PUBLIC OF A PROCEEDING TO
REVISE THE RULES OF THE STATE CORPORATION
COMMISSION

GOVERNING APPLICATIONS TO CONSTRUCT AND
OPERATE ELECTRIC GENERATION FACILITIES

CASE NO. PUE-2008-00066

The State Corporation Commission ("Commission") has established a proceeding in which it proposes to revise its existing rules governing applications to construct and operate electric generating facilities ("Generation Rules" or "Rules"). The current Rules are set forth in Chapter 302 (5 VAC 20-302-10 et seq.) within Title 20 of the Virginia Administrative Code.

Legislation enacted by the 2007 and 2008 Sessions of the Virginia General Assembly is largely prompting the Commission's decision to propose changes in its Rules. The 2007 General Assembly enacted SB 1416 in which as part of its "re-regulation" of Virginia's electric utilities, it required such utilities to establish that new electric generation facilities proposed for construction and operation in Virginia be approved by the Commission on the basis that the "public convenience and necessity" require their construction.

Closely related to SB 1416 is SB 311, a 2008 enactment by the General Assembly that, beginning in 2009, requires Virginia's electric utilities to file integrated resources plans ("IRP"). IRPs filed with the Commission are required to (i) project demand over a 15 year period, and (ii) identify and describe plans by which such demand will be met by supply side and demand side resources over that 15 year period.

Amendments proposed to the Generation Rules ("Proposed Amendments") establish filing requirements Virginia's electric utilities must satisfy in establishing need for proposed, new generation facilities to be constructed in Virginia. The information proposed to be furnished in the Proposed Amendments includes an analysis of load and generating capacity reserve forecast information that demonstrates the need for the plant in the in-service year proposed.

The Proposed Amendments further provide that the construction in Virginia of electric generating facilities with rated capacities of 5 MW or less may be undertaken without complying with the full filing requirements currently set forth in the Generation Rules. Instead, persons desiring to construct such facilities are required to (i) submit a letter to the Commission's Director of the Division of Energy Regulation stating the location, size and fuel type of the facility, and (ii)

comply with all other requirements of federal, state and local law.

The Proposed Amendments are appended to the Commission's Order for Notice and Comment establishing this proceeding.

Interested persons are encouraged to obtain copies of this Commission Order and the Proposed Amendments. Copies are available for public inspection at the Commission's Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia 23219, Monday through Friday, 8:15 a.m. to 5:00 p.m. Copies may also be downloaded from the Commission's website: <http://www.scc.virginia.gov/case>

On or before September 26, 2008, any interested person may comment on, or propose modifications or supplements to, or request a hearing on the Proposed Amendments by filing an original and fifteen (15) copies of such comments with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, making reference in such comments to Case No. PUE-2008-00066. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the papers filed herein. 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>.

All filings in this proceeding shall be directed to the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, making reference in such comments to Case No. PUE-2008-00066.

STATE CORPORATION COMMISSION

(4) On or before September 26, 2008, any interested person may comment on, propose modifications or supplements to, or request a hearing on the Proposed Amendments by filing an original and fifteen (15) copies of such comments with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, making reference in such comments to Case No. PUE-2008-00066. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the papers filed herein. 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>.

(5) The Commission Staff may file a report with the Clerk of the Commission on or before November 5, 2008,

concerning comments submitted to the Commission by interested persons addressing the Proposed Amendments.

(6) This matter is continued for further Orders of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.

¹ Chapter 302 is titled: "Filing Requirements in Support of Applications for Authority to Construct and Operate an Electrical Generating Facility."

² SB 1269 added a new Chapter 23 (§ 56-576 et seq.) to Title 56 of the Code of Virginia.

³ Section 56-580 D then provided as follows:

D. The Commission may permit the construction and operation of electrical generating facilities upon a finding that such generating facility and associated facilities including transmission lines and equipment (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility and (ii) are not otherwise contrary to the public interest. In review of its petition for a certificate to construct and operate a generating facility described in this subsection, the Commission shall give consideration to the effect of the facility and associated facilities, including transmission lines and equipment, on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1.

⁴ Section 56-579 D 2 then provided, in pertinent part, as follows:

D. Nothing in this section shall be deemed to abrogate or modify: . . .

2. The laws of this Commonwealth concerning the exercise of the right of eminent domain by a public service corporation pursuant to the provisions of Article 5 (§ 56-257 et seq.) of Chapter 10 of this title; however, on and after January 1, 2002, the right of eminent domain may not be exercised in conjunction with the construction or enlargement of any utility facility whose purpose is the generation of electric energy; (emphasis added).

⁵ Chapter 933 of the 2007 Acts of Assembly.

⁶ D. The Commission shall permit the construction and operation of electrical generating facilities *in Virginia* upon a finding that such generating facility and associated facilities (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility, (ii) *are required by the public convenience and necessity, if a petition for such permit is filed after July 1, 2007, and if they are to be constructed and operated by any regulated utility whose rates are regulated pursuant to § 56-585.1, and* (iii) (iii) are not otherwise contrary to the public interest. (emphasis indicates amendments to § 56-580 D effected by SB 1416).

⁷ SB 311 added a new Chapter 24 (§ 56-597 et seq.) in Title 56 of the Code of Virginia.

⁸ Section 56-578 D specifically states that "[T]he Commission shall consider developing expedited permitting processes for small generation facilities of fifty megawatts or less."

⁹ See, e.g., § 56-585.2, enacted as part of SB 1416, and adding renewable portfolio standard ("RPS") provisions to Virginia's laws governing electric utilities. Specifically, § 56-585.2 requires Virginia's electric utilities desiring to qualify for certain financial performance incentives to achieve specific RPS benchmarks, e.g., by calendar year 2010, 4 percent of total electricity sold by utilities (i.e., those seeking to qualify for this incentive) in the base year must be generated utilizing renewable energy. Renewable energy is defined in § 56-576 of the Code as "energy derived from sunlight, wind, falling water, sustainable biomass, energy from waste, wave motion, tides, and geothermal power, and does not include energy derived from coal, oil, natural gas or nuclear power."

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20VAC5-302-10. Applicability and scope.

Any application, except as noted herein, filed by a person planning to construct electric generating facilities and incidental or associated facilities in the Commonwealth of Virginia and who must apply for approval from the State Corporation Commission ("commission"), pursuant to §§56-46.1, and 56-580 D of the Code of Virginia must comply with the provisions of this chapter. ~~Distributed generation facilities as they may be defined by the commission and net energy metering facilities as defined in §56-594 of the Code of Virginia are not subject to this chapter.~~ Applications filed pursuant to this chapter ~~must~~ shall set forth (i) the nature of the proposed facility, (ii) the applicant's technical and financial fitness to construct, operate and maintain the proposed facility, (iii) the effects of the facility on the environment and economic development, (iv) the effects of the facility upon reliability of electric service provided by any regulated public utility, and (v) why construction and operation of the proposed facility is not contrary to the public interest.

Construction of electric generating facilities with a rated capacity of 5 MW or less may be undertaken without complying with the filing requirements established by this chapter. Persons desiring to construct such facilities shall (i) submit a letter to the Director of the Division of Energy Regulation stating the location, size and fuel type of the facility, and (ii) comply with all other requirements of federal, state and local law.

The filing of confidential information will be treated in accordance with ~~20VAC5-20-170~~ 5VAC5-20-170 of the ~~Commission's State Corporation Commission~~ Rules of Practice and Procedure (~~5VAC5-20-10 et seq.~~).

20VAC5-302-20. General information, electric generating facility information and documents to be included in the application for electric generating facilities greater than 50 MW.

The following information shall be provided for all proposed electric generating facilities with a rated capacity in excess of 50 MW. In addition, an applicant requiring the construction of natural gas facilities in conjunction with the construction, ownership or operation of an electric generating facility shall serve notice of its application for construction of the electric generating facility upon all natural gas local distribution companies in whose certificated service territories the natural gas facilities will be constructed or operated.

1. Legal name of the applicant as well as any trade name.
2. A description of the applicant's authorized business structure, identifying the state authorizing such structure and the date thereof, e.g., if incorporated, the state and date of incorporation; if a limited liability company, the state issuing the certificate of organization and the date thereof.

3. Name and business addresses of all principal corporate officers and directors, partners, and LLC members, as appropriate.

4. Financial information for the applicant, or principal participant or participants in the project. If the applicant or principal participant or participants is a private entity, financial information should include an analysis of the entity's financial condition and audited financial statements for the two most recent fiscal years. If the applicant or principal participant or participants is a public company, financial information should include the entity's most recent stockholder report and most recent Securities and Exchange Commission Form 10-K.

5. Prefiled testimony in support of the application.

6. A discussion of the applicant's qualifications, including:

- a. A summary of other projects developed and managed by the applicant. Include location, status, and operational history.
- b. A detailed description of the organizational structure of the applicant. Include the division of ownership, if applicable.
- c. A description of any affiliation or affiliations with an incumbent electric utility as defined in §56-576 of the Code of Virginia.

7. Specific information about the site for the proposed facility, including:

- a. A written description of the location including identification of the city or county in which the facility will be constructed. Such description should be suitable for newspaper publication and be sufficient for identification of affected areas.
- b. A description of the site, and a depiction on topographic maps of the proposed site.
- c. The status of site acquisition (i.e., purchase option, ownership, etc.).
- d. A description of any applicable local zoning or land use approvals required and the status of such approvals.

8. Specific information about the proposed facility, including:

- a. Description of all major systems, facility configuration and expected suppliers of major components.
- b. Nameplate capacity, gross dependable capacity, net dependable capacity and expected seasonal heat rates.
- c. Estimated costs, and schedule for construction, testing and commercialization.

9. A description of the fuel supply arrangement for the proposed facility. The description should detail:

- a. Fuel type, quality and source or sources.
 - b. Transportation and fuel storage arrangements for fuel delivery.
 - c. Identification of all new pipeline facilities, if any, needed to serve the proposed facility.
 - d. Ownership of any such facilities.
 - e. Plans for constructing such facilities.
 - f. The location and routing of any such facilities.
 - g. The size of such facilities.
 - h. Whether such facilities will be utilized to provide or enhance fuel supplies to other entities.
 - i. Identification of the pipeline or gas distribution company and the rate schedule the applicant intends to utilize in order to serve the proposed generating facility. Identification of whether the service is firm or interruptible.
 - j. If the applicant is to be served by firm capacity from an interstate pipeline, identification of whether the capacity is to be acquired through the construction of new facilities, via capacity that is currently unsubscribed or through capacity purchased on the secondary market.
 - k. If pipeline capacity is to be constructed, identification of the ~~FERC~~ Federal Energy Regulatory Commission docket number or any open season that has been held by the interstate pipeline.
 - l. If capacity is to be purchased on the secondary market, identification of the availability of secondary market capacity in the plant's market area during days that the plant intends to operate.
 - m. Identification of the proposed in-service date of any facilities to be constructed.
 - n. In general terms, description of the availability of fuel supplies required to serve the proposed facility.
10. A discussion of economic impacts (both positive and negative), of the project. The discussion should address the tax and employment implications of the project.
11. A list of other local, state or federal government agencies whose requirements must be met in connection with the construction or operation of the project and a statement of the status of the approval procedures for each of these agencies.
12. An analysis of the environmental impact of the project shall be provided sufficient to enable the commission to make the determinations required by §§56-46.1 and 56-580 D of the Code of Virginia. This analysis shall include, but is not limited to, the impacts on the environment and natural resources, analysis of alternatives considered,

unavoidable adverse impacts, mitigation measures proposed to minimize unavoidable impacts, and any irreversible environmental changes. The information required by this subdivision shall be submitted to the Department of Environmental Quality, simultaneously with its filing with the commission, for coordination and review by state agencies responsible for environmental and natural resource protection. ~~Such~~ The information shall ~~include at a minimum, the following~~ identify:

- a. ~~Air quality.~~ Discussion should ~~identify~~ Required air permits, expected restrictions, expected emissions, rates of emissions, and any needed emissions offsets or allowances.
 - b. ~~Water source.~~ Discussion should ~~include~~ Required permits for water withdrawals, expected restrictions, the amount of water estimated to be used, the source of such water, identification of a backup source of water, if any, and identification of any facilities that need to be constructed to provide such water.
 - c. ~~Discharge of cooling water.~~ Discussion should ~~include an identification of required~~ Required permits for water discharge and potential impacts on regional water flows.
 - d. ~~Tidal and nontidal wetlands.~~ Discussion should ~~include an identification of any required~~ Required permits related to the wetlands and an identification of any tidal and nontidal wetlands located near the proposed site and how such wetlands will be impacted by applicant's proposed facility.
 - e. ~~Solid and hazardous wastes.~~ Discussion should ~~address impact~~ Impact of solid and hazardous wastes on local water resources.
 - f. ~~Natural~~ Impact on natural heritage resources, and on threatened and endangered species.
 - g. Erosion and sediment control measures.
 - h. Archaeological, historic, scenic, cultural, or architectural resources in the area.
 - i. Chesapeake Bay Preservation Areas designated by the locality.
 - j. Wildlife resources.
 - k. ~~Recreation, agricultural and forest resources.~~ Discussion should ~~identify~~ Agricultural and forest resources and federal, local, state or private parks and recreation areas.
 - l. ~~The use~~ Use of pesticides and herbicides.
 - m. Geology and mineral resources, caves, and sinkholes.
 - n. Transportation infrastructure.
13. A general discussion of reliability impacts including:

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- a. A description of transmission interconnection requirements and needed interconnection facilities.
- b. A description of the potential impact of the proposed facility on the interconnected transmission system. Discussion should identify and summarize any system impact studies or proposed studies.
- c. A description of anticipated services (ancillary services, re-dispatch, energy imbalance, etc.) that may be provided to any transmission service provider.
- d. A discussion of existing and expected generation reserves in the region and the impact of the proposed facility on such reserves.

14. A discussion of whether the proposed facility is not contrary to the public interest. ~~Such~~ The discussion shall include, but is not limited to, an analysis of any reasonably known impacts the proposed facility may have upon reliability of service to, and rates paid by, customers of any regulated public utility for service in the Commonwealth, including water service, gas distribution service, electric distribution service, and electric transmission service.

~~15. A discussion of whether and, if so, how the project will further the goals of advancement of electric competition in Virginia.~~

20VAC5-302-25. General information, electric generating facility information and documents to be included in the application for electric generating facilities equal to 50 MW or less but greater than 5 MW.

The following information shall be provided for all proposed electric generating facilities with a rated capacity of 50 MW or less but greater than 5 MW.

1. ~~Legal~~ The legal name of the applicant as well as any trade name.
2. A description of the applicant's authorized business structure, identifying the state authorizing such structure and the date thereof, e.g., if incorporated, the state and date of incorporation; if a limited liability company, the state issuing the certificate of organization and the date thereof.
3. ~~Name~~ The name and business addresses of all principal corporate officers and directors, partners, and LLC members, as appropriate.
4. Financial information for the applicant, or principal participant or participants in the project. If the applicant or principal participant or participants is a private entity, financial information should include an analysis of the entity's financial condition and audited financial statements for the two most recent fiscal years, if available. If the applicant or principal participant or participants is a public company, financial information should include the entity's most recent stockholder report and most recent Securities and Exchange Commission Form 10-K. If such

information is unavailable, provide evidence that applicant has the financial resources, or access to capital, necessary to complete the proposed project.

5. A discussion of the applicant's qualifications, including:
 - a. A summary of other projects developed and managed by the applicant. Include location, status, and operational history.
 - b. A description of any affiliation or affiliations with an incumbent electric utility as defined in §56-576 of the Code of Virginia.

6. Specific information about the site for the proposed facility, including:

- a. A written description of the location including identification of the city or county in which the facility will be constructed. ~~Such~~ The description should be suitable for newspaper publication and be sufficient for identification of affected areas.
- b. A description of the site, and a depiction on topographic maps of the proposed site.
- c. The status of site acquisition (i.e., purchase option, ownership, etc.).

7. A general description of the proposed facility, type of facility, size and fuel type.

8. A general description of the fuel supply arrangement for the proposed facility.

9. A general discussion of the economic developments impacts of the project.

10. A list of other local, state or federal government agencies whose requirements must be met in connection with the construction or operation of the project and a statement of the status of the approval procedures for each of these agencies.

11. An analysis of the environmental impact of the project shall be provided sufficient to enable the commission to make the determinations required by §§56-46.1 and 56-580 D of the Code of Virginia. This analysis shall include, but is not limited to, the impacts on the environment and natural resources, analysis of alternatives considered, unavoidable adverse impacts, mitigation measures proposed to minimize unavoidable impacts, and any irreversible environmental changes. The information required by this subdivision shall be submitted to the Department of Environmental Quality, simultaneously with its filing with the commission, for coordination and review by state agencies responsible for environmental and natural resource protection. ~~Such~~ The information shall ~~include at a minimum, the following identify:~~

- a. ~~Air quality. Discussion should identify required~~ Required air permits, expected restrictions, expected

emissions, rates of emissions, and any needed emissions offsets or allowances.

b. ~~Water source. Discussion should include required~~ Required permits for water withdrawals, expected restrictions, the amount of water estimated to be used, the source of such water, identification of a backup source of water, if any, and identification of any facilities that need to be constructed to provide such water.

c. ~~Discharge of cooling water. Discussion should include an identification of required~~ Required permits for water discharge and potential impacts on regional water flows.

d. ~~Tidal and nontidal wetlands. Discussion should include an identification of any required~~ Required permits related to the wetlands and an identification of any tidal and nontidal wetlands located near the proposed site and how such wetlands will be impacted by applicant's proposed facility.

e. ~~Solid and hazardous wastes. Discussion should address impact~~ Impact of solid and hazardous waste on local water resources.

f. ~~Natural~~ Impact on natural heritage resources, and on threatened and endangered species.

g. Erosion and sediment control measures.

h. Archaeological, historic, scenic, cultural, or architectural resources in the area.

i. Chesapeake Bay Preservation Areas designated by the locality.

j. Wildlife resources.

k. ~~Recreation, agricultural and forest resources. Discussion should identify~~ Agricultural and forest resources and federal, local, state or private parks and recreation areas.

l. ~~The use~~ Use of pesticides and herbicides.

m. Geology and mineral resources, caves, and sinkholes.

n. Transportation infrastructure.

12. A general discussion of reliability impacts including:

a. A description of transmission interconnection requirements and needed interconnection facilities.

b. A description of the potential impact of the proposed facility on the interconnected transmission system. Discussion should identify and summarize any system impact studies or proposed studies.

c. A description of anticipated services (ancillary services, redispatch, energy imbalance, etc.) that may be provided to any transmission service provider.

d. A discussion of existing and expected generation reserves in the region and the impact of the proposed facility on such reserves.

13. Any other information the applicant wishes to include that will demonstrate that the project is not contrary to the public interest.

~~14. A discussion of whether and, if so, how the project will further the goals of advancement of electric competition in Virginia.~~

20VAC5-302-35. Information required from incumbent electric utilities and affiliates of incumbent electric utilities.

Any incumbent electric utility as defined in §56-576 of the Code of Virginia ~~and any affiliate of an incumbent electric utility proposing to construct an electric generating facility within its control area in the Commonwealth of Virginia~~ should provide a discussion of how justification of the need for the proposed facility will impact its ability to exert market power within its control area. In addition, the following information ~~should~~ shall be included:

~~1. Total capacity controlled by, or under contract to, the applicant and its affiliates located within the control area and reasonably accessible to the control area through transmission interconnections, with and without the proposed facility.~~

~~2. Total capacity located within the control area and reasonably accessible to the control area through transmission interconnections, with and without the proposed facility.~~

~~3. A calculation showing the percentage of capacity within and accessible to the control area through transmission interconnections owned by the applicant and its affiliates, with and without the proposed facility.~~ 1. Feasibility and engineering design studies that support the specific plant type and site selected.

2. Fuel supply studies that demonstrate the availability and adequacy of selected fuels.

3. Detailed support for planning assumptions regarding plant performance and operating costs, including historical information for similar units.

4. Economic studies that compare the selected alternative with other options considered, including sensitivity analyses and production costing simulations of the applicant's overall generating resources that demonstrate that the selected option is the best alternative.

5. Load and generating capacity reserve forecast information that demonstrates the need for the plant in the in-service year proposed.

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6. Detailed cost estimate for the facility, included projected costs of construction, transmission interconnections, fuel supply related infrastructure improvements and project financing.

VA.R. Doc. No. R08-1413; Filed July 30, 2008, 8:13 a.m.

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.

Titles of Regulations: 20VAC5-312. Rules Governing Retail Access to Competitive Energy Services (amending 20VAC5-312-10, 20VAC5-312-20, 20VAC5-312-60, 20VAC5-312-80, 20VAC5-312-90, repealing 20VAC5-312-120).

20VAC5-313. Rules Governing Exemptions to Minimum Stay Requirements and Wires Charges (amending 20VAC5-313-10; repealing 20VAC5-313-30).

Statutory Authority: §12.1-13 of the Code of Virginia.

Public Hearing Information: A public hearing will be held upon request.

Public Comments: Public comments may be submitted until 5 p.m. on September 22, 2008.

Agency Contact: David Eichenlaub, Assistant Director, Division of Economics and Finance, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9050, FAX (804) 371-9935, or email david.eichenlaub@scc.virginia.gov.

Summary:

The proposed amendments incorporate changes to these rules as they relate to electric energy services necessitated by the changes in the statutory requirements for the provision of retail access to electric energy services set forth in amendments by the Virginia General Assembly to the Virginia Electric Utility Restructuring Act, (§56-576 et seq. of the Code of Virginia), renamed the Virginia Electric Utility Regulation Act. To initiate this proceeding, the commission's staff has prepared proposed rules that remove references to default service, modify the initiation of the reporting requirements for companies to begin with enrollment of customers under a retail access program, modify the customer information requirement on local distribution companies, modify the minimum stay requirement for electric customers, provide for an exception to the billing and payment rules for those companies offering an approved 100% renewable electric tariff to its retail customers, and

eliminate the regulation governing competitive metering from 20VAC5-312. The proposed rules change 20VAC5-313 by eliminating rules related to wires charges.

AT RICHMOND, JULY 29, 2008

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUE-2008-00061

Ex Parte: In the matter of revising the rules of the State Corporation Commission governing Retail Access to Competitive Energy Services

ORDER FOR NOTICE OF PROCEEDING TO CONSIDER
REVISIONS TO THE COMMISSION'S RULES
GOVERNING RETAIL ACCESS TO COMPETITIVE
ENERGY SERVICES

The Commission's Rules Governing Retail Access to Competitive Energy Services ("Retail Access Rules") 20 VAC 5-312-10 et seq., were adopted by the Commission in 2001¹ and last revised in 2003.² Additionally, the Rules Governing Exemptions to Minimum Stay Requirements and Wires Charges, set forth 20 VAC 5-313-10 et seq., were adopted in 2006 as transitory regulations, promulgated pursuant to the amended provisions of the Virginia Electric Utility Restructuring Act (§§ 56-577 E and 56-583 of the Code of Virginia ("Code")) to be applicable to suppliers of electric services including investor-owned local distribution companies and competitive service providers, and are in addition to the existing Retail Access Rules.³ With the 2007 amendments by the Virginia General Assembly to the Virginia Electric Utility Restructuring Act, Code §§ 56-576 et seq.,⁴ the Commission has concluded that it is appropriate to revise the Retail Access Rules to incorporate changes to these rules necessitated by changes in the statutory requirements for the provision of retail access to electric energy services. To initiate this proceeding, the Commission's Staff has prepared proposed rules which are appended to this Order ("Proposed Rules"). We will direct that notice of the Proposed Rules be given to the public and that interested persons be provided an opportunity to file written comments on, propose modifications or supplements to, and request a hearing on the Proposed Rules.

The Commission's Division of Information Resources is directed to cause the Proposed Rules to be published in the Virginia Register of Regulations and to make the Proposed Rules available for inspection on the Commission's internet website.

Accordingly, IT IS ORDERED THAT:

(1) This matter shall be docketed and assigned Case No. PUE-2008-00061.

(2) The Commission's Division of Information Resources shall forward the Proposed Rules to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(3) The Commission's Division of Information Resources shall make a downloadable version of the Proposed Rules available for access by the public at the Commission's website, <http://www.scc.virginia.gov/caseinfo.htm>. The Clerk of the Commission shall make a copy of the proposed Rules, free of charge, in response to any written request for one.

(4) On or before September 1, 2008, the Commission's Division of Information Resources shall publish the following notice as classified advertising in the newspapers of general circulation throughout the Commonwealth of Virginia.

NOTICE TO THE PUBLIC OF A PROCEEDING TO
REVISE REGULATIONS GOVERNING RETAIL ACCESS
TO COMPETITIVE ENERGY SERVICES

CASE NO. PUE-2008-00061

The Commission's Rules Governing Retail Access to Competitive Energy Services ("Retail Access Rules") 20 VAC 5-312-10 et seq., were adopted by the Commission in 2001 and last revised 2003. Additionally, the Rules Governing Exemptions to Minimum Stay Requirements and Wires Charges, set forth 20 VAC 5-313-10 et seq., were adopted in 2006 as transitory regulations, promulgated pursuant to the amended provisions of the Virginia Electric Utility Restructuring Act (§§ 56-577 E and 56-583 of the Code of Virginia ("Code")) to be applicable to suppliers of electric services including investor-owned local distribution companies and competitive service providers, and are in addition to the existing Retail Access Rules. With the 2007 amendments by the Virginia General Assembly to the Virginia Electric Utility Restructuring Act, Code §§ 56-576 et seq., the Commission has concluded that it is appropriate to revise the Retail Access Rules to incorporate changes to these rules necessitated by changes in the statutory requirements for the provision of retail access to electric energy services.

Accordingly, the Commission has established a proceeding in which it proposes to revise the Retail Access Rules to account for the changes in the electric industry statutory laws enacted by the General Assembly. These revisions, attached to the Commission's order establishing this proceeding as "Proposed Rules" were prepared by the Commission's Staff. Interested persons are encouraged to obtain copies of this Commission Order and the Proposed Rules. Copies are available for public inspection at the Commission's Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia,

Monday through Friday, 8:15 a.m. to 5:00 p.m. Copies may also be downloaded from the Commission's website: <http://www.scc.virginia.gov/caseinfo.htm>.

On or before September 22, 2008, any interested person may comment on, propose modifications or supplements to, or request a hearing on the Proposed Rules by filing an original and fifteen (15) copies of any such comments, proposals, or requests with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118 Richmond, Virginia 23218, or pursuant to the Commission's rules for electronic filings, pursuant to 20 VAC 5-20-140 of the Commission's Rules of Practice and Procedure. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the papers filed herein. Comments may also be submitted electronically by following the instructions via the Commission's website: <http://www.scc.virginia.gov/caseinfo.htm>.

All comments, proposals, or requests made in this proceeding shall be directed to the Clerk of the Commission and make reference to Case No. PUE-2008-00061.

STATE CORPORATION COMMISSION

CASE NO. PUE-2008-00061

(5) Interested persons wishing to comment, propose modifications or supplements to, or request a hearing on the Proposed Rules shall file an original and fifteen (15) copies of such comments, proposal, or request with the Clerk of Commission, State Corporation Commission, P.O. Box 2118, Richmond, Virginia 23218, on or before September 22, 2008, making reference to Case No. PUE-2008-00061 or by following the Commission's rules for electronic filing pursuant to 20 VAC 5-20-140 of the Commission's Rules of Practice and Procedure. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the papers filed herein. Comments may also be submitted electronically by following the instructions via the Commission's website: <http://www.scc.virginia.gov/caseinfo.htm>.

(6) The Commission Staff may file a report with the Clerk of the Commission on or before October 6, 2008, concerning comments submitted to the Commission by interested parties addressing the Proposed Rules.

(7) This matter is continued for further orders of the Commission.

Regulations

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: all public utilities and representatives of entities and organizations involved in the energy services industry as shown on that attached appendices and to the individuals and organizations on the service list attached hereto.

¹ Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of establishing rules for retail access, Case No. PUE-2001-00013 (Commission Final Order entered on June 19, 2001). These Retail Access Rules were developed from interim retail access rules governing the limited scope of pilot programs in the electric and natural gas industries adopted pursuant to Case No. PUE-1998-00812.

² Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter concerning aggregation of retail electric customers under the provisions of the Virginia Electric Utility Restructuring Act, Case No. PUE-2002-00174 (Commission Order adopting revised regulations entered on April 9, 2003).

³ Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of establishing rules and regulations pursuant to the Virginia Electric Utility Restructuring Act for exemptions to minimum stay requirements and wires charges, Case No. PUE-2004-00068 (Commission Order on motion adopting rules and regulations entered January 4, 2006).

⁴ Chapter 993 of the 2007 Virginia Acts of Assembly. Now the Virginia Energy Regulation Act, Chapter 883 of the 2008 Virginia Acts of Assembly.

20VAC5-312-10. Applicability; definitions.

A. These regulations are promulgated pursuant to the provisions of the Virginia Electric Utility ~~Restructuring Regulation~~ Act (§56-576 et seq. of the Code of Virginia) and to the provisions of retail supply choice for natural gas customers, §56-235.8 of the Code of Virginia. The provisions in this chapter apply to suppliers of electric and natural gas services including local distribution companies and competitive service providers, and govern ~~the implementation of~~ retail access to competitive energy services, to the extent permissible by statute, in the electricity and natural gas markets, including the conduct of market participants. The provisions in this chapter shall be effective January 1, 2009, and applicable to ~~the implementation of full or phased in~~ retail access to competitive energy services in the service territory of each local distribution company.

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

"Affiliated competitive service provider" means a competitive service provider that is a separate legal entity that controls, is controlled by, or is under common control of, a local distribution company or its parent. For the purpose of this chapter, any unit or division created by a local distribution company for the purpose of acting as a competitive service provider shall be treated as an affiliated competitive service provider and shall be subject to the same provisions and regulations.

"Aggregator" means a person licensed by the State Corporation Commission that, as an agent or intermediary, (i) offers to purchase, or purchases, electricity or natural gas

supply service, or both, or (ii) offers to arrange for, or arranges for, the purchase of electricity supply service or natural gas supply service, or both, for sale to, or on behalf of, two or more retail customers not controlled by or under common control with such person. The following activities shall not, in and of themselves, make a person an aggregator under this chapter: (i) furnishing legal services to two or more retail customers or competitive service providers; (ii) furnishing educational, informational, or analytical services to two or more retail customers, unless direct or indirect compensation for such services is paid by a competitive service provider supplying electricity or natural gas, or both; (iii) furnishing educational, informational, or analytical services to two or more competitive service providers; (iv) ~~providing default service under §56-585 of the Code of Virginia;~~ (v) conducting business as a competitive service provider licensed under 20VAC5-312-40; and (vi) ~~(v)~~ (v) engaging in actions of a retail customer, acting in common with one or more other such retail customers, to issue a request for proposal or to negotiate a purchase of electricity supply service or natural gas supply service, or both, for consumption by such retail customers.

"Billing party" means a person who renders a consolidated or separate bill directly to a retail customer for competitive energy services, or distribution services, or both.

"Bill-ready" means the consolidated billing practice in which the nonbilling party calculates each retail customer's billing charges for services provided and forwards such charges to the billing party for inclusion on the consolidated bill.

"Business day" means any calendar day or computer processing day in the Eastern United States time zone in which the general office of the applicable local distribution company is open for business with the public.

"Competitive energy service" means the retail sale of electricity supply service, natural gas supply service, or any other competitive service as provided by legislation and approved by the State Corporation Commission as part of retail access by an entity other than the local distribution company as a regulated utility. For the purpose of this chapter, competitive energy services include services provided to retail customers by aggregators.

"Competitive service provider" means a person, licensed by the State Corporation Commission, that sells or offers to sell a competitive energy service within the Commonwealth. This term includes affiliated competitive service providers, as defined above, but does not include a party that supplies electricity or natural gas, or both, exclusively for its own consumption or the consumption of one or more of its affiliates. For the purpose of this chapter, competitive service providers include aggregators.

~~"Competitive transition charge" means the wires charge, as provided by §56-583 of the Code of Virginia, that is applicable to a retail customer that chooses to procure electricity supply service from a competitive service provider.~~

"Consolidated billing" means the rendering of a single bill to a retail customer that includes the billing charges of a competitive service provider and the billing charges of the local distribution company.

"Customer" means retail customer.

"Distribution service" means the delivery of electricity or natural gas, or both, through the distribution facilities of the local distribution company to a retail customer.

"Electricity supply service" means the generation of electricity, or when provided together, the generation of electricity and its transmission to the distribution facilities of the local distribution company on behalf of a retail customer.

"Electronic Data Interchange" (EDI) means computer-to-computer exchange of business information using common standards for high volume electronic transactions.

"Local Distribution Company" means an entity regulated by the State Corporation Commission that owns or controls the distribution facilities required for the transportation and delivery of electricity or natural gas to the retail customer.

"Minimum stay period" means the minimum period of time a customer who requests electricity supply service from the local distribution company, pursuant to ~~§56-582-D~~ §§56-577 A 3 c, 56-577 C 1, and 56-582 D of the Code of Virginia, after a period of receiving electricity supply service from a competitive service provider, is required to use such service from the local distribution company.

"Natural gas supply service" means the procurement of natural gas, or when provided together, the procurement of natural gas and its transportation to the distribution facilities of a local distribution company on behalf of a retail customer.

"Nonbilling party" means a person who provides retail customer billing information for competitive energy services or regulated service to the billing party for the purpose of consolidated billing.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the Commonwealth or any city, county, town, authority or other political subdivision of the Commonwealth.

"Price-to-compare" means the portion of the electric local distribution company's regulated rate applicable to electricity supply service ~~less the competitive transition charge rate~~ or the portion of the natural gas local distribution company's regulated rate applicable to natural gas supply service.

"Rate-ready" means the consolidated billing practice in which the nonbilling party provides rate information to the billing party to calculate and include the nonbilling party's charges on the consolidated bill.

"Residential customer" means any person receiving retail distribution service under a residential tariff of the local distribution company.

"Retail access" means the opportunity for a retail customer in the Commonwealth to purchase a competitive energy service from a licensed competitive service provider seeking to sell such services to that customer.

"Retail customer" means any person who purchases retail electricity or natural gas for his or her own consumption at one or more metering points or nonmetered points of delivery located within the Commonwealth.

"Separate billing" means the rendering of separate bills to a retail customer for the billing charges of a competitive service provider and the billing charges of the local distribution company.

"Transmission provider" means an entity regulated by the Federal Energy Regulatory Commission that owns or operates, or both, the transmission facilities required for the delivery of electricity or natural gas to the local distribution company or retail customer.

"Virginia Electronic Data Transfer Working Group" (VAEDT) means the group of representatives from electric and natural gas local distribution companies, competitive service providers, the staff of the State Corporation Commission, and the Office of Attorney General whose objective is to formulate guidelines and practices for the electronic exchange of information necessitated by retail access.

20VAC5-312-20. General provisions.

A. A request for a waiver of any of the provisions in this chapter shall be considered by the State Corporation Commission on a case-by-case basis, and may be granted upon such terms and conditions as the State Corporation Commission may impose.

B. The provisions of this chapter may be enforced by the State Corporation Commission by any means authorized under applicable law or regulation. Enforcement actions may include, without limitation, the refusal to issue any license for which application has been made, and the revocation or suspension of any license previously granted. The provisions of this chapter shall not be deemed to preclude a person aggrieved by a violation of these regulations from pursuing any civil relief that may be available under state or federal law, including, without limitation, private actions for damages or other equitable relief.

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C. The provisions of this chapter shall not be deemed to prohibit the local distribution company, in emergency situations, from taking actions it is otherwise authorized to take that are necessary to ensure public safety and reliability of the distribution system. The State Corporation Commission, upon a claim of inappropriate action or its own motion, may investigate and take such corrective actions as may be appropriate.

D. The State Corporation Commission maintains the right to inspect the books, papers, records and documents, and to require reports and statements, of a competitive service provider as required to verify qualifications to conduct business within the Commonwealth, to support affiliate transactions, to investigate allegations of violations of this chapter, or to resolve a complaint filed against a competitive service provider. Every competitive service provider licensed pursuant to this chapter shall establish and maintain records identifying persons or entities performing promotional or marketing activities on behalf of or in conjunction with such competitive service provider.

~~E. Absent the designation of a default service provider as determined by the State Corporation Commission pursuant to §56-585 of the Code of Virginia, the~~ The local distribution company shall provide, pursuant to the prices, terms, and conditions of its tariffs approved by the State Corporation Commission, service to all customers that do not select a competitive service provider and to customers that chose a competitive service provider but whose service is terminated for any reason.

F. A competitive service provider selling electricity supply service or natural gas supply service, or both, at retail shall:

1. Procure sufficient electric generation and transmission service or sufficient natural gas supply and delivery capability, or both, to serve the requirements of its firm customers.
2. Abide by any applicable regulation or procedure of any institution charged with ensuring the reliability of the electric or natural gas systems, including the State Corporation Commission, the North American Electric Reliability Council Corporation, and the Federal Energy Regulatory Commission, or any successor agencies thereto.
3. Comply with any obligations that the State Corporation Commission may impose to ensure access to sufficient availability of capacity.

G. The local distribution company and a competitive service provider shall not:

1. Suggest that the services provided by the local distribution company are of any different quality when competitive energy services are purchased from a particular competitive service provider; or

2. Suggest that the competitive energy services provided by a competitive service provider are being provided by the local distribution company rather than the competitive service provider.

H. The local distribution company shall conduct its forecasting, scheduling, balancing, and settlement activities in a nondiscriminatory and reasonably transparent manner.

~~I. The local distribution company or competitive service provider shall bear the responsibility for metering as provided by legislation and implemented by the State Corporation Commission.~~

~~J. The local distribution company and a competitive service provider shall coordinate their customer communication activities with the State Corporation Commission's statewide consumer education campaign.~~

~~K. J.~~ J. The local distribution company and a competitive service provider shall adhere to standard practices for exchanging data and information in an electronic medium as specified by the VAEDT and filed with the State Corporation Commission or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission. In the event the parties agree to initially use a means other than those specified by VAEDT or the local distribution company's tariff, then the competitive service provider shall file a plan with the State Corporation Commission's Division of Economics and Finance to implement VAEDT or tariff approved standards within 180 days of the initial retail offering.

~~L. K.~~ K. The local distribution company and a competitive service provider that is responsible for exchanging customer information electronically with such local distribution company shall, except as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission, successfully complete EDI testing and receive certification for all EDI transactions, as outlined in the VAEDT EDI Test Plan, prior to actively enrolling customers, except as permitted by subsection K of this section.

~~M. L.~~ L. A competitive service provider offering billing service that requires the direct delivery of a bill to a customer and that requires the electronic exchange of data with the local distribution company shall furnish, prior to enrolling the customer, a sample bill produced from the data exchanged in the EDI certification process, or comparable electronic data exchange process, as described in subsection L of this section, or a sample bill produced similarly elsewhere, to the State Corporation Commission's Division of Energy Regulation and Division of Economics and Finance.

~~N. The M.~~ M. Upon enrollment of a customer to receive competitive supply service, the local distribution company shall file with the State Corporation Commission's Division of Energy Regulation and Division of Economics and Finance

a monthly report which shall, at a minimum, include all cancellation requests alleging a customer was enrolled without authorization. Such reports shall include: (i) the approximate date of the enrollment; (ii) the identity of the competitive service provider involved; (iii) the name and address of the customer that cancelled such enrollment; and (iv) if readily available, a brief statement regarding the customer's explanation for the cancellation. Such reports shall be reviewed by commission staff and regarded as confidential unless and until the State Corporation Commission orders otherwise.

~~Q.~~ N. Upon enrollment of a customer to receive competitive supply service, the local distribution company shall file with the State Corporation Commission's Division of Economics and Finance a quarterly report providing a detailed breakdown of residential and nonresidential customer switching activity. Such reports shall include, for the local distribution company, the total number of customers and corresponding amount of load eligible to switch; and, for each competitive service provider, the total number of customers and corresponding amount of load served. The amount of load shall be measured in MW or dekatherm capacity of peak load contribution and in kWh or therms of associated energy. Such reports shall be reviewed by commission staff and information specific to individual competitive service providers shall be regarded as confidential unless and until the State Corporation Commission orders otherwise.

~~P.~~ O. By March 31 of each year, the provider of electricity supply service shall report to its customers and file a report with the State Corporation Commission stating to the extent feasible, fuel mix and emissions data for the prior calendar year. If such data is unavailable, the provider of electricity supply service shall file a report with the State Corporation Commission stating why it is not feasible to submit any portion of such data.

~~Q.~~ P. A competitive service provider shall file a report with the State Corporation Commission by March 31 of each year to update all information required in the original application for licensure. A \$100 administrative fee payable to the State Corporation Commission shall accompany this report.

~~R.~~ Q. A competitive service provider shall inform the State Corporation Commission within 30 days of the following: (i) any change in its name, address and telephone numbers; (ii) any change in information regarding its affiliate status with the local distribution company; (iii) any changes to information provided pursuant to 20VAC5-312-40 A 13; and (iv) any changes to information provided pursuant to 20VAC5-312-40 A 15.

~~S.~~ R. If a filing with the State Corporation Commission, made pursuant to this chapter, contains information that the local distribution company or a competitive service provider claims to be confidential, the filing may be made under seal

provided it is accompanied by both a motion for protective order or other confidential treatment and an additional five copies of a redacted version of the filing to be available for public disclosure. Unredacted filings containing the confidential information shall be maintained under seal unless the State Corporation Commission orders otherwise, except that such filings shall be immediately available to the commission staff for internal use at the commission. Filings containing confidential or redacted information shall be so stated on the cover of the filing, and the precise portions of the filing containing such confidential or redacted information, including supporting material, shall be clearly marked within the filing.

20VAC5-312-60. Customer information.

A. A competitive service provider shall adequately safeguard all customer information and shall not disclose such information unless the customer authorizes disclosure or unless the information to be disclosed is already in the public domain. This provision, however, shall not restrict the disclosure of credit and payment information as currently permitted by federal and state statutes.

B. The local distribution company shall provide, upon the request of a competitive service provider, a mass list of eligible customers. A competitive service provider shall adequately safeguard all of the information included on the mass list and shall not disclose such information unless the customer authorizes disclosure or unless the information to be disclosed is already in the public domain.

1. The mass list shall include the following customer information: (i) customer name; (ii) service address; (iii) billing address; (iv) either an account number, a service delivery point, or universal identifier, as applicable; (v) meter reading date or cycle; (vi) wholesale delivery point, if applicable; (vii) rate class and subclass or rider, as applicable; (viii) load profile reference category, if not based on rate class; and (ix) up to twelve months of cumulative historic energy usage and annual peak demand information as available.

2. Prior to disclosing any information on the mass list, the local distribution company shall provide each customer the opportunity to have the information itemized in subdivision 1 of this subsection withheld, in total, from the mass list.

3. The local distribution company shall ~~make the mass list available two months prior to implementation of full or phased-in retail access and shall~~ update or replace the list ~~every six months thereafter~~ annually. Prior to each update, each customer shall be provided an opportunity to reverse the prior decision regarding the disclosure of the information included on the mass list.

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4. The local distribution company shall prepare and make available the mass list by means specified by the VAEDT or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission.

C. A competitive service provider choosing to utilize the mass list shall use the most recent mass list made available by the local distribution company.

D. A competitive service provider shall obtain customer authorization prior to requesting any customer usage information not included on the mass list from the local distribution company. A competitive service provider shall provide evidence of such authorization, in the manner required to demonstrate authorization to enroll a customer in 20VAC5-312-80 B, upon request by the customer or the State Corporation Commission.

20VAC5-312-80. Enrollment and switching.

A. A competitive service provider may offer to enroll a customer upon: (i) receiving a license from the State Corporation Commission; (ii) receiving EDI certification as required from the VAEDT or completing other data exchange testing requirements as provided by the local distribution company's tariff approved by the State Corporation Commission, including the subsequent provision of a sample bill as required by 20VAC5-312-20 ~~M~~ L ; and (iii) completing registration with the local distribution company.

B. A competitive service provider may enroll, or modify the services provided to, a customer only after the customer has affirmatively authorized such enrollment or modification. A competitive service provider shall maintain adequate records allowing it to verify a customer's enrollment authorization. Examples of adequate records of enrollment authorization include: (i) a written contract signed by the customer; (ii) a written statement by an independent third party that witnessed or heard the customer's verbal commitments; (iii) a recording of the customer's verbal commitment; or (iv) electronic data exchange, including the Internet, provided that the competitive service provider can show that the electronic transmittal of a customer's authorization originated with the customer. Such authorization records shall contain the customer's name and address; the date the authorization was obtained; the name of the product, pricing plan, or service that is being subscribed; and acknowledgment of any switching fees, minimum contract terms or usage requirements, or cancellation fees. Such authorization records shall be retained for at least 12 months after enrollment and shall be provided within five business days upon request by the customer or the State Corporation Commission.

C. A competitive service provider shall send a written contract to a customer prior to, or contemporaneously with, sending the enrollment request to the local distribution company.

D. Upon a customer's request, a competitive service provider may re-enroll such customer at a new address under the existing contract, without acquiring new authorization records, if the competitive service provider is licensed to provide service to the customer's new address and is registered with the local distribution company.

E. The local distribution company shall advise a customer initiating new service of the customer's right and opportunity to choose a competitive service provider.

F. In the event that multiple enrollment requests are submitted regarding the same customer within the same enrollment period, the local distribution company shall process the first one submitted and reject all others for the same enrollment period.

G. Except as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission, the competitive service provider shall submit an enrollment request to the local distribution company at least 15 days prior to the customer's next scheduled meter reading date for service to be effective on that meter reading date. For an enrollment request received less than 15 days prior to the customer's next scheduled meter reading date, service shall be effective on the customer's subsequent meter reading date, except as provided by subsection H of this section.

H. A competitive service provider may request, pursuant to the local distribution company's tariff, a special meter reading, in which case the enrollment may become effective on the date of the special meter reading. The local distribution company shall perform the requested special meter reading as promptly as working conditions permit.

I. Upon receipt of an enrollment request from a competitive service provider, the local distribution company shall, normally within one business day of receipt of such notice, mail notification to the customer advising of the enrollment request, the approximate date that the competitive service provider's service commences, and the caption and statement as to cancellation required by 20VAC5-312-70 C 8. The customer shall have until the close of business on the tenth day following the mailing of such notification to advise the local distribution company to cancel such enrollment without penalty.

J. In the event a competitive service provider receives a cancellation request within the cancellation period provided by 20VAC5-312-70 C 8 or 20VAC5-312-70 D, it shall notify, by any means specified by the VAEDT or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission, the local distribution company of the customer's cancellation in order to terminate the enrollment process.

K. In the event the local distribution company receives notice of a cancellation request from a competitive service provider or a customer within the cancellation period

provided by 20VAC5-312-70 C 8 or 20VAC5-312-70 D, the local distribution company shall terminate the enrollment process by any means specified by the VAEDT or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission.

L. In the event a customer terminates a contract beyond the cancellation period as provided by 20VAC5-312-70 C 8 and 20VAC5-312-70 D, the competitive service provider or the local distribution company shall provide notice of termination to the other party by any means specified by the VAEDT or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission.

M. If a competitive service provider terminates an individual contract for any reason, including expiration of the contract, the competitive service provider shall provide notice of termination to the local distribution company by any means specified by the VAEDT or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission and also shall send written notification of such termination, for reasons other than nonpayment, to the customer at least 30 days prior to the date that service to the customer is scheduled to terminate. A competitive service provider shall send written notification to the customer for termination for nonpayment at least 15 days prior to the date that service to such customer is scheduled to terminate.

N. If the local distribution company is notified by a competitive service provider that the competitive service provider will terminate service to a customer, the local distribution company shall respond to the competitive service provider by any means specified by the VAEDT or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission to acknowledge (i) receipt of the competitive service provider's notice, and (ii) the date that the competitive service provider's service to the customer is scheduled to terminate. Additionally, the local distribution company shall send written notification to the customer, normally within five business days, that it was so informed and describe the customer's opportunity to select a new supplier. ~~Absent the designation of a default service provider as determined by the State Corporation Commission pursuant to §56-585 of the Code of Virginia, the~~ The local distribution company shall inform the affected customer that if the customer does not select another competitive service provider, the local distribution company shall provide the customer's electricity supply service or natural gas supply service pursuant to the prices, terms, and conditions of its tariffs approved by the State Corporation Commission.

O. If a competitive service provider decides to terminate service to a customer class or to abandon service within the Commonwealth, the competitive service provider shall provide at least 60 days advanced written notice to the local

distribution company, to the affected customers, and to the State Corporation Commission.

P. If the local distribution company issues a final bill to a customer, the local distribution company shall notify, by any means specified by the VAEDT or as otherwise provided in the local distribution company's tariff approved by the State Corporation Commission, the customer's competitive service provider.

Q. ~~The~~ If the local distribution company does not offer an approved tariff for electric energy provided 100% from renewable energy pursuant to §56-577 A 5 of the Code of Virginia, the local distribution company may require a 12-month minimum stay period for electricity customers with an annual peak demand of 500 kW or greater. Electricity customers that return to capped-rate service provided by the local distribution company as a result of a competitive service provider's abandonment of service in the Commonwealth may choose another competitive service provider at any time without the requirement to remain for the minimum stay period of 12 months. For customers greater than 5 MW and pursuant to §56-577 A 3 c of the Code of Virginia, an electricity customer choosing to purchase supply service from a licensed supplier after December 31, 2008, may return to service provided by the local distribution company upon five years' written notice and at the prices, terms, and conditions of the tariffs approved by the State Corporation Commission. Alternatively, such an electricity customer may seek an exemption from the State Corporation Commission to provide less than five years' notice and, if such exemption is granted, return to service provided by the local distribution company at prices based on market-based costs pursuant to §56-577 A 3 d of the Code of Virginia.

R. The local distribution company may, upon a proper showing with evidence acquired by actual experience, apply for approval from the State Corporation Commission to implement alternative minimum stay period requirements. If the applicant proposes to lower the applicability limit below 500 kW, such application shall include at a minimum, the detailed information prescribed by the State Corporation Commission in the text of its Final Order in Case No. PUE010296, or as may be revised in a subsequent order.

S. The local distribution company electing to implement a minimum-stay period in conformance with this chapter shall notify, in writing, applicable customers at least 30 days in advance of such implementation date and within each subsequent notification letter as required by 20VAC5-312-80 I. Electricity customers who have selected a competitive service provider prior to the local distribution company's notice of implementing a minimum-stay period will not be subject to the minimum stay period until such time as the customer renews an existing contract or chooses a new competitive service provider.

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20VAC5-312-90. Billing and payment.

A. A competitive service provider shall offer separate billing service or consolidated billing service, where either the local distribution company or the competitive service provider would be the billing party, to prospective customers pursuant to ~~§56-581.1 of the Code of Virginia~~ and the local distribution company's tariff approved by the State Corporation Commission. Where a competitive service provider would be the billing party, prior to an initial offering of consolidated billing service to customers within the service territory of each local distribution company, and after certification as required by 20VAC5-312-20 ~~L~~ K, the competitive service provider shall abide by the following requirements:

1. The competitive service provider shall provide written notice, at least 30 days in advance, to the local distribution company and to the State Corporation Commission's Division of Energy Regulation and Division of Economics and Finance. The written notification to the Division of Energy Regulation and the Division of Economics and Finance shall include:

a. The anticipated date of the initial consolidated billing service offering in each local distribution company service territory in which the service will be offered.

b. Any changes in information provided by the competitive service provider in its original license application pursuant to 20VAC5-312-40 A that have not been reported to the State Corporation Commission pursuant to 20VAC5-312-20 ~~Q~~ P and 20VAC5-312-20 ~~R~~ Q.

c. The expected maximum market penetration for the provision of consolidated billing service to electricity customers during the following 12 months, including the estimated number of customers and associated annual consumption by customer type or load profile classification.

d. A representation that the electric competitive service provider has undertaken the necessary preliminary coordination efforts with tax officials of each potentially affected locality regarding the competitive service provider's obligation to collect and remit local consumption taxes and local utility consumer taxes.

2. The competitive service provider shall establish such financial security as the State Corporation Commission may require for such competitive service provider's estimated liability associated with the collection and remittance of state, local, and special regulatory consumption taxes and local utility consumer taxes.

B. Subject to the exemptions applicable to municipal electric utilities and utility consumer service cooperatives set forth in §56-581.1 J of the Code of Virginia, a competitive service

provider shall coordinate the provision of the customer-selected billing service with the local distribution company by any means specified by VAEDT or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission.

C. Consolidated billing, except as otherwise arranged through contractual agreement between the local distribution company and a competitive service provider or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission, shall:

1. Be performed under a "bill-ready" protocol.

2. Not require the billing party to purchase the accounts receivable of the nonbilling party.

3. Not require the electric local distribution company to include natural gas competitive energy service charges on a consolidated bill or the natural gas local distribution company to include electric competitive energy service charges on a consolidated bill.

4. Not require the local distribution company to exchange billing information for any customer account with more than one competitive service provider for the same billing period.

5. Comply with the local distribution company's normal billing and credit cycle requirements for distribution service.

D. In the event a competitive service provider collects security deposits or prepayments, such funds shall be held in escrow by a third party in Virginia, and the competitive service provider shall provide to the State Corporation Commission the name and address of the entity holding such deposits or prepayments.

E. A competitive service provider requiring a deposit or prepayment from a customer shall limit the amount of the deposit or prepayment to the equivalent of a customer's estimated liability for no more than three months' usage of services from the competitive service provider by that customer.

F. Customer deposits held or collected by a local distribution company shall be for only those services provided by the local distribution company. Any deposit held in excess of this amount shall be promptly credited or refunded to the customer. The local distribution company may, upon a customer's return to regulated electricity supply service or natural gas supply service, collect that portion of a customer deposit as permitted by the local distribution company's tariffs and 20VAC5-10-20.

G. Terms and conditions concerning customer disconnection for nonpayment of regulated service charges shall be set forth in each local distribution company's tariff approved by the State Corporation Commission. A customer may not be

disconnected for nonpayment of unregulated service charges. If a customer receives consolidated billing service and a competitive service provider is the billing party, the local distribution company shall advise the customer directly of any pending disconnection action for nonpayment through 10 days' notice by mail, separate from the consolidated bill. Such notice shall clearly identify the amount that must be paid and the date by which such amount must be received by, and also provide instructions for direct payment to, the local distribution company to avoid disconnection.

H. The provision of consolidated billing service shall conform to the following requirements:

1. The billing party shall apply a customer's partial payment of a consolidated bill as designated by the customer, or, in the absence of a customer's designation, to charges in the following order: (i) to regulated service arrearages owed the local distribution company; (ii) to competitive energy service arrearages owed the competitive service provider; (iii) to regulated service current charges of the local distribution company; (iv) to competitive energy service current charges of the competitive service provider; and (v) to other charges.

2. Collections of state and local consumption taxes and local utility consumer taxes shall be remitted as required by law. The person responsible for collecting and remitting such taxes shall:

a. Submit simultaneously, on or before the last day of the succeeding month of collection to the State Corporation Commission's Division of Public Service Taxation, the payment of the preceding month's state and special regulatory consumption taxes and associated Electric Utility or Natural Gas Consumption Tax Monthly Report.

b. Submit simultaneously, in accordance with the Code of Virginia and local ordinance, to each local government in whose jurisdiction the taxes have been collected, the payment of local consumption taxes and local utility consumer taxes and associated tax remittance reports.

I. The local distribution company and a competitive service provider shall comply with the following minimum billing information standards applicable to all customer bills:

1. Sufficient information shall be provided or referenced on the bill so that a customer can understand and calculate the billing charges.

2. Charges for regulated services and unregulated services shall be clearly distinguished.

3. Standard terminology shall be employed and charges shall be categorized for the following key bill components, as applicable: (i) distribution service; (ii) ~~competitive transition charge~~; (iii) electricity supply service or natural gas supply service; ~~(iv)~~ (iii) state and local consumption

tax; and ~~(v)~~ (iv) local (or locality name) utility tax. The bill may provide further detail of each of these key components as appropriate.

4. Nonroutine charges and fees shall be itemized including late payment charges and deposit collections.

5. The total bill amount due and date by which payment must be received to avoid late payment charges shall be clearly identified.

6. The 24-hour toll-free telephone number of the local distribution company for service emergencies shall be clearly identified.

7. In the event a disconnection notice for nonpayment is included on a customer bill issued by the local distribution company, the notice shall appear on the first page of the bill and be emphasized in a manner that draws immediate attention to such notice. The notice shall clearly identify the amount that must be paid and the date by which such amount must be paid to avoid disconnection.

8. The following additional information shall be provided on customer bills to the extent applicable:

a. Customer name, service address, billing address, account number, rate schedule identifier, and meter identification number.

b. Billing party name, payment address, and toll-free telephone number for customer inquiries and complaints.

c. For consolidated bills, nonbilling party name and toll-free telephone number for customer inquiries and complaints and the customer's local distribution company account number.

d. Bill issue date and notice of change in rates.

e. Previous and current meter readings and dates of such meter readings or metering period days, current period energy consumption, meter reading unit conversion factor, billing-demand information, and "estimated" indicator for non-actual meter reads.

f. Previous bill amount or account balance, payments received since previous billing, balance forward, current charges, total amount due or current account balance, and payment plan information.

g. For consolidated bills, billing party and nonbilling party elements as specified in subdivision 8 f of this subsection.

J. The local distribution company shall comply with the following additional billing information standards applicable to the bills of customers that are not subject to demand-based billing charges and that purchase regulated electricity supply service or regulated natural gas supply service from the local distribution company:

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1. The local distribution company shall employ standard terminology and categorize charges for the following key billing components: (i) distribution service; (ii) electricity supply service or natural gas supply service; (iii) state and local consumption tax; and (iv) local (or locality name) utility tax. Brief explanations of distribution service and electricity supply service or natural gas supply service shall be presented on the bill. Such explanations shall convey that distribution service is a regulated service that must be purchased from the local distribution company and that electricity supply service or natural gas supply service may be purchased from the competitive market—~~but, if applicable, may result in a competitive transition charge;~~

2. The local distribution company shall provide on customer bills a customer's monthly energy consumption, numerically or graphically, for the previous 12 months; and

3. The investor-owned electric local distribution company shall provide on each bill a "price-to-compare" value, stated in cents per kilowatt-hour, representing the cost of regulated electricity supply service less the competitive transition charge, if any, that would be applicable if such service were purchased from a competitive service provider. The appropriate use and limitations of such "price-to-compare" value shall be stated on the bill.

K. The local distribution company shall develop and implement a program to provide "price-to-compare" information and assistance to customers. The local distribution company shall provide a program plan to the State Corporation Commission's Division of Energy Regulation at least 90 days prior to the implementation of full or phased-in retail access. Such a program shall ensure that customers will be provided meaningful information for evaluating competitive offers of electricity supply service or natural gas supply service. At a minimum, the program shall include a mechanism for providing, or making readily accessible, customer-specific "price-to-compare" information, including explanations of its appropriate use and limitations and, ~~if applicable, the relationship between the regulated electricity supply charge, the competitive transition charge, and the "price to compare."~~

L. The billing party shall, except as otherwise arranged through contractual agreement with the nonbilling party, provide sufficient space on a consolidated bill to accommodate the local distribution company's customer account number and the nonbilling party's name and toll-free telephone number, previous bill amount or account balance, payments applied since the previous billing, balance forward, total current charges, total amount due or current account balance, six additional numeric fields to detail current charges, and 240 additional text characters.

M. If the local distribution company, as the billing party, provides consolidated billing service to a customer and

continues to be the customer's billing party after the customer's service with a competitive service provider terminates, the local distribution company shall, except as otherwise arranged through contractual agreement with such competitive service provider, continue to track and bill customer account arrearages owed to such competitive service provider for two billing cycles after service has terminated. The bill shall list, at a minimum, the name, toll-free telephone number, and balance due for each former competitive service provider.

N. If the current charges of the nonbilling party are not included on the consolidated bill issued by the billing party, the bill shall note that such charges are not included.

O. If the current charges of the nonbilling party are not included on the consolidated bill issued by the billing party due to causes attributable to the nonbilling party, the charges shall be billed in the following month unless the two parties mutually agree to other arrangements.

P. If the current charges of the nonbilling party are not included on the consolidated bill issued by the billing party due to causes attributable to the billing party, the bill shall be cancelled and reissued to include such charges unless the two parties mutually agree to other arrangements.

Q. The local distribution company or a competitive service provider shall report any significant deficiency regarding the timely issuance, accuracy, or completeness of customer bills to the State Corporation Commission's Division of Energy Regulation as soon as practicable. Such reports shall detail the circumstances surrounding the deficiency and the planned corrective actions.

R. If the local distribution company has an approved tariff for electric energy provided 100% from renewable energy pursuant to §56-577 A 5 of the Code of Virginia, the provisions of this section shall not be applicable. Instead, an electric distribution company and an electric competitive service provider shall only offer separate billing service where both would be the billing party for the respective services to prospective customers pursuant to the local distribution company's tariff approved by the State Corporation Commission.

20VAC5-312-120. Electricity metering. (Repealed.)

~~A. If the local distribution company provides interval metering as a customer's basic metering service in accordance with its applicable tariff, interval metering of that customer's load shall continue to be required if the customer purchases electricity supply service from a competitive service provider. Unless other arrangements are agreed upon between the local distribution company and the customer, the local distribution company may remove the interval meter if the customer's load deteriorates below previously established interval metering thresholds.~~

~~B. Upon a customer's request, the local distribution company shall provide interval metering service to the customer at the net incremental cost above the basic metering service provided by the local distribution company. The local distribution company shall reply to the customer in writing within five business days of the request for interval metering service, acknowledging receipt of the request, explaining the process, and identifying the prerequisites for commencing and completing the work. Once the customer has completed the applicable prerequisites, the local distribution company shall complete the work within 45 calendar days, or as promptly as working conditions permit.~~

~~C. The local distribution company shall offer each of the following interval metering service options to customers or their authorized competitive service provider to access unedited interval data from the local distribution company's interval metering equipment and consistent with the local distribution company's communication protocol: (i) read only electronic access to the interval billing meter, (ii) receipt of a stream of data pulses proportional to energy usage, and (iii) both of the foregoing.~~

~~D. As a component of interval metering service, the local distribution company shall read interval meters at a frequency in accordance with its applicable terms and conditions and shall store interval meter data at intervals compatible with wholesale load settlement requirements. Interval meter data may be estimated on occasion as necessary. The local distribution company shall make available to customers or their authorized competitive service provider 12 months of historical edited interval data through electronic communication medium unless otherwise requested by mail, as mutually agreed.~~

~~E. The local distribution company shall respond to requests from customers or their authorized competitive service provider to evaluate special metering functionality that may not be provided normally under the local distribution company's tariff but that is determined by the local distribution company to be within the capability of its interval metering equipment. The local distribution company shall acknowledge receipt of the requests in writing within five business days, indicating that the net incremental cost, prerequisites and process for providing the special metering functionality will be submitted in writing within 30 days. Once the customer has completed the applicable prerequisites, the local distribution company shall provide the special metering functionality within 45 calendar days, or as promptly as working conditions permit.~~

~~F. The local distribution company shall install and maintain meters owned by large industrial customers and large commercial customers if the meter is determined to be consistent with the local distribution company's billing and metering systems and communication protocol. Ownership shall apply to the meter as defined by a line of demarcation~~

~~specified in the local distribution company tariff approved by the State Corporation Commission.~~

~~G. Upon a customer's request to own a meter in accordance with subsection F of this section, the local distribution company shall reply to the customer in writing within 10 days of the request, acknowledging receipt of the request, explaining the process, and identifying the prerequisites for commencing and completing the work. The local distribution company shall also explain its policies with respect to replacement of defective meters. Once the customer has completed the applicable prerequisites, the local distribution company shall complete the work within 45 days, or as promptly as working conditions permit.~~

~~H. Upon the installation of a meter owned by a customer in accordance with subsections F and G of this section, the local distribution company shall continue to have full access to the meter and shall continue to perform its normal obligations including but not limited to testing, replacement, customer accounting, reading and data management. In accordance with subsection C of this section, the local distribution company shall provide customers or their authorized competitive service provider with read only electronic access to the meter.~~

20VAC5-313-10. Applicability.

~~A. The existing Rules Governing Retail Access to Competitive Energy Services (20VAC5-312) remain enforceable unless further qualified by the following additional rules.~~

~~B. These transitory regulations are promulgated pursuant to the amended provisions of the Virginia Electric Utility Restructuring Act (§§56-577 E and 56-583 of the Code of Virginia). This chapter applies to suppliers of electric services including investor-owned local distribution companies and competitive service providers, and are in addition to the existing rules of 20VAC5-312. The provisions in this chapter shall be applicable to the provision of generation service to the qualifying customers electing exemption to the current minimum stay provisions or to payment of the current wires charges. Rules applicable to the minimum stay exemption program shall remain in force until the termination of capped rates as provided under statute or State Corporation Commission order. Rules applicable to the offering of the wires charges exemption program shall remain in force until the earlier of July 1, 2007, or the termination of any wires charges.~~

20VAC5-313-30. Exemption to wires charges. (Repealed.)

~~A. This section applies to an investor owned electric local distribution company imposing wires charges on its customers, except those customers participating in pilot programs approved by the State Corporation Commission in~~

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~~Case No. PUE 2003 00118, and to competitive service providers serving such customers.~~

~~B. The investor owned electric local distribution company shall offer large industrial customers or large commercial customers, as well as any group of customers of any rate class aggregated together, subject to the participation limits of subsection I of this section, and upon the customer's notice to participate at least 60 days in advance, the option to purchase retail electric energy from licensed competitive service providers without the obligation to pay any wires charges imposed by the utility in exchange for the customers' agreement to pay market based costs upon any subsequent return to service of the local distribution company.~~

~~C. The investor owned electric local distribution company shall provide written notice, in a clear and conspicuous manner, as approved by the staff of the State Corporation Commission, to qualified customers of the options identified in subsection B of this section and associated risks, particularly the customer's inability to ever return to service of the local distribution company at capped rates. In addition, the investor owned local distribution company shall supplement such written notice by providing information on its website, as approved by the staff of the State Corporation Commission, detailing the options identified in subsection B of this section.~~

~~D. The investor owned electric local distribution company shall employ the methodology to determine its market based costs as provided in 20VAC5-313-40 and approved by the State Corporation Commission in Case No. PUE 2004 00068 for any customer electing such option and subsequently returning to the local distribution company.~~

~~E. An aggregator electing to serve a group of electric customers and acting on behalf of each customer and electing the option offered through subsection B of this section shall do so on behalf of its total aggregated load.~~

~~F. A contract of an aggregator and a competitive service provider serving such qualified customers shall contain a clear and conspicuous caption: "Customer's Right to Exemption of Wires Charges," in bold face type of a minimum size of 10 points, disclosing any wires charges imposed by the local distribution company, including options to exempt such payment, and associated risks to exercise such options, including the inability to ever return to service of the local distribution company at capped rates.~~

~~G. The investor owned local distribution company's notification to the customer advising of an enrollment request, as required by 20VAC5-312-80 I, for customers electing to waive the wires charges, shall in a clear and conspicuous manner, as approved by the staff of the State Corporation Commission, state that the customer will not be required to pay wires charges, but that the customer will not~~

~~ever return to service of the local distribution company at capped rates.~~

~~H. The competitive service provider serving a customer that is not obligated to pay wires charges shall provide the investor owned local distribution company 60 days notice prior to terminating service to such a customer.~~

~~I. The election to be exempt from any wires charges is available to the first 1,000 MW or 8.0% of the investor owned electric local distribution company's prior year Virginia adjusted peak load.~~

~~J. Such exemption provisions are enforceable until the earlier of July 1, 2007, or the termination of any imposed wires charges, while the inability to return to capped rate service remains indefinitely upon exercising this option.~~

VA.R. Doc. No. R08-1525; Filed July 30, 2008, 8:43 a.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR THE AGING

Final Regulation

Title of Regulation: **22VAC5-30. The Virginia Public Guardian and Conservator Program (adding 22VAC5-30-10 through 22VAC5-30-60).**

Statutory Authority: §2.2-712 of the Code of Virginia.

Effective Date: January 1, 2009.

Agency Contact: Janet James, Esq., State Legal Services Developer, Department for the Aging, 1610 Forest Avenue, Richmond, VA 23229, telephone (804) 662-7049, FAX (804) 662-9354, TTY (804) 662-9333, or email janet.james@vda.virginia.gov.

Summary:

The regulation sets forth requirements for the statewide Virginia Public Guardian and Conservator Program to ensure uniformity among programs in serving eligible persons, at public expense, who need a guardian or conservator or both, to assist them in meeting essential requirements for physical and emotional health and management of financial resources, as appropriate.

Based upon public comment, the proposed regulation has been amended to (i) clearly establish an ideal ratio of clients to paid staff of 20 incapacitated persons to every one paid full-time staff; (ii) include language to address emergency of unusual circumstances for programs to voluntarily serve five additional persons; (iii) include language requiring VDA, in consultation with the advisory board, to establish written procedures for public programs to obtain waivers regarding deviations in the ideal ratio of

clients to paid staff; (iv) under "Appointments," included language to address existing information available to assist the multidisciplinary panel in screening of cases for individuals receiving case management services through a community services board (CSB) or behavioral health authority (BHA); and (v) add language requiring multidisciplinary panels to affirmatively recommend limitations on the scope of guardianship, where appropriate, as part of the screening process. In addition, some existing language has been amended or repositioned to more clearly state the program's intent and duty to encourage incapacitated persons to participate in decisions, to act on their own behalf, and to develop or regain the capacity to manage their personal affairs, where possible.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Changes Since Proposed is not available

CHAPTER 30
THE VIRGINIA PUBLIC GUARDIAN AND
CONSERVATOR PROGRAM

22VAC5-30-10. Definitions.

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

"Advisory board" means the Virginia Public Guardian and Conservator Advisory Board as authorized by §§2.2-2411 and 2.2-2412 of the Code of Virginia.

"Client" means a person who has been adjudicated incapacitated and who is receiving services from a public guardian program.

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." The term includes (i) a local or regional program designated by the Department for the Aging as a public conservator pursuant to Article 2 (§2.2-711 et seq.) of Chapter 7 of Title 2.2 of the Code of Virginia or (ii) any local or regional tax-exempt charitable organization established pursuant to §501(c)(3) of the Internal Revenue Code to provide conservatorial services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Virginia Department for the Aging (VDA) as a public conservator, it may also serve as a conservator for other individuals. Incorporated by reference to this definition is the definition of

"conservator" found in §37.2-1000 of the Code of Virginia and any successor language thereof.

"Guardian" means a person appointed by the court who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, therapeutic treatment, and, if not inconsistent with an order of involuntary admission, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian." The term includes (i) a local or regional program designated by the Department for the Aging as a public guardian pursuant to Article 2 (§2.2-711 et seq.) of Chapter 7 of Title 2.2 of the Code of Virginia or (ii) any local or regional tax-exempt charitable organization established pursuant to §501(c)(3) of the Internal Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Virginia Department for the Aging as a public guardian, it may also serve as a guardian for other individuals. Incorporated by reference to this definition is the definition of "guardian" found in §37.2-1000 of the Code of Virginia and any successor language thereof.

"Incapacitated person" means an adult who has been found by a court to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) meet the essential requirements for his health, care, safety, or therapeutic needs without the assistance or protection of a guardian or (ii) manage property or financial affairs or provide for his support or for the support of his legal dependents without the assistance or protection of a conservator. A finding that the individual displays poor judgment alone shall not be considered sufficient evidence that the individual is an incapacitated person within the meaning of this definition. A finding that a person is incapacitated shall be construed as a finding that the person is "mentally incompetent" as that term is used in Article II, Section 1 of the Constitution of Virginia and Title 24.2 of the Code of Virginia unless the court order entered pursuant to this chapter specifically provides otherwise. Incorporated by reference to this definition is the definition of "incapacitated person" found in §37.2-1000 of the Code of Virginia and any successor language thereof.

"Indigency" means the client is a current recipient of a state-funded or federally funded public assistance program for the indigent or as otherwise defined in §19.2-159 of the Code of Virginia.

"Least restrictive alternatives" means, but is not limited to money management services including bill payer and representative payee services, care management, and services

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provided pursuant to a financial or health care power of attorney.

"Minimal fee" means allowable fees collected or payable from government sources and shall not include any funds from an incapacitated person's estate.

"Public guardian program" means a local or regional public or private nonprofit entity or program designated by VDA as a public guardian, a public conservator or both, pursuant to §§2.2-712 and 2.2-713 of the Code of Virginia, and operating under a contract entered into with VDA.

22VAC5-30-20. Introduction and purpose.

A. Introduction. Pursuant to §2.2-711 of the Code of Virginia, the General Assembly declared that the policy of the Commonwealth is to ensure the appointment of a guardian or conservator to persons who cannot adequately care for themselves because of incapacity to meet essential living requirements where (i) the incapacitated person is indigent, and (ii) there is no other proper and suitable person willing and able to serve in such capacity.

B. Purpose. This regulation sets forth requirements for the statewide program of local and regional public guardian programs and establishes the requirements for local and regional entities to operate a designated public guardian program.

22VAC5-30-30. Public guardian programs.

A. Designation. VDA shall select public guardian programs in accordance with the requirements of the Virginia Public Procurement Act. Only those programs that contract with VDA will be designated as public guardian programs. Funding for public guardian programs is provided by the appropriation of general funds.

B. Authority. A public guardian program appointed as a guardian, a conservator, or both as a guardian and conservator, shall have all the powers and duties specified in Article 1 (§37.2-1000 et seq.) of Chapter 10 of Title 37.2 of the Code of Virginia, except as otherwise specifically limited by a court.

C. Structure.

1. Each public guardian program shall have a program director who supervises and is responsible for providing guardianship services to any incapacitated persons assigned by the court and to provide overall administration for the public guardian program. The program director must be a full-time employee of the program and have experience as a service provider or administrator in one or more of the following areas: social work, case management, mental health, nursing or other human service programs. The program director must also demonstrate by objective criteria, a knowledge and understanding of Virginia's guardianship laws, alternatives

to guardianship, and surrogate decision making activities. The program director shall attend all training and activities required by VDA.

2. Each public guardian program shall establish a multidisciplinary panel to (i) screen cases for the purpose of ensuring that appointment of a guardian or conservator is appropriate under the circumstances and is the least restrictive alternative available to assist the incapacitated person [~~This screening shall include a duty to recommend the most appropriate limitations on the power of the guardian or conservator, if any, to ensure that the powers and duties assigned are the least restrictive,~~] and (ii) annually review cases being handled by the program to ensure that a guardian or conservator appointment remains appropriate. Composition of a multidisciplinary panel should include representatives from various human services agencies serving the city, county, or region where the public guardian program accepts referrals. If serving a region, the multidisciplinary panel shall have at least one representative from each local jurisdiction within the region. To the extent appropriate disciplines are available, ~~this panel [may should]~~ include but is not limited to representation from:

- a. Local departments of social services, adult protective services;
- b. Community services boards [or behavioral health authorities] ;
- c. An attorney licensed by the Virginia State Bar;
- d. Area agencies on aging;
- e. Local health departments;
- f. Nursing home, assisted living, and group home administrators; and
- g. Physicians and community representatives.

D. Client ratio to paid staff.

1. Each public guardian program shall maintain a direct service ratio of clients to paid staff that does not exceed [VDA's established ideal ratio of] 20 incapacitated persons to every one paid full-time staff person [20:1] . [~~A deviation up to and including 30 incapacitated persons to every one paid full-time staff person may be authorized by VDA, in writing, where the proposed plan for staffing ensures that the guardian or conservator will maintain sufficient contacts with the incapacitated person. For the purposes of this section, the term "sufficient contacts" means that the guardian or conservator has an appropriate amount of contact with the incapacitated person to know of his capabilities, limitations, needs, and opportunities; and, to the extent feasible, the guardian or conservator shall encourage the incapacitated person to participate in~~

~~decisions to act on his own behalf and to develop or regain the capacity to manage his personal affairs.]~~

2. Each public guardian program shall have in place a plan to immediately provide notice to the circuit court(s) in its jurisdiction and to VDA when the program determines that it may exceed its [~~maximum~~ ideal] ratio of clients to paid staff.

3. [In an emergency or unusual circumstance, each program, in its discretion, may exceed VDA's established ideal ratio by no more than five additional incapacitated persons. Each program shall have in place a policy to immediately provide notice to VDA when such an emergency or unusual circumstance occurs and when the emergency or unusual circumstance ends and the ideal ratio has returned to 20:1. The notice to VDA shall comply with policy established by VDA. Other than an emergency or unusual circumstance as described in the preceding sentence, a waiver must be requested to exceed VDA's established ideal ratio.] VDA [, in consultation with the advisory board,] shall establish written procedures for public guardian programs to obtain appropriate waivers regarding deviations in the [ideal] ratio of clients to paid staff. Procedures shall comply with § [§2.2-712 and] 2.2-713 of the Code of Virginia. VDA shall [~~inform the Advisory Board whenever a waiver is issued to a Public Guardian Program~~ report waiver requests and status of granted waivers to the advisory board at its regularly scheduled meetings]. VDA shall review such waivers every six months [~~until the ratio of clients to paid staff does not exceed 20 incapacitated persons to every 1 paid staff person~~ to ensure that there is no immediate threat to the person or property of any incapacitated person nor that exceeding VDA's established ideal ratio is having or will have a material and adverse effect on the ability of the program to properly serve all of the incapacitated persons it has been designated to serve].

E. Appointments.

1. Prior to the public guardian program accepting an individual for services, the multidisciplinary panel, described in 22VAC5-30-30 C 2, shall screen referrals to ensure that:

- a. The public guardian program is appointed as guardian, or conservator, or both only in those cases where guardianship [or conservatorship] is the least restrictive alternative available to assist the individual;
- b. The appointment is consistent with serving the type of client identified by the established priorities of the public guardian program;
- c. The individual cannot adequately care for himself;
- d. The individual is indigent; and

e. There is no other proper or suitable person or entity to serve as guardian.

[f. In the case of an individual who receives case management services from a community services board (CSB) or behavioral health authority (BHA), the multidisciplinary panel may also request the results of the "determination of capacity" as authorized by 12VAC35-115-145 (Determination of capacity to give consent or authorization) and verification that no other person is available or willing to serve as guardian pursuant to 12VAC35-115-146 E (Authorized representatives).]

2. Appointments by a circuit court shall name the public guardian program, rather than an individual person, as the guardian, the conservator or both guardian and conservator.

3. A public guardian program shall only accept appointments as guardian, conservator, or both guardian and conservator that generate no fee or that generate a minimal fee.

F. Services.

1. A public guardian program shall have a continuing duty to seek a proper and suitable person who is willing and able to serve as guardian, conservator, or both guardian and conservator for the incapacitated person.

[2. The guardian or conservator shall encourage the incapacitated person to participate in decisions, to act on his own behalf, and to develop or regain the capacity to manage his personal affairs to the extent feasible.]

[~~3. 3.] The multidisciplinary panel, described in 22VAC5-30-30 C 2, shall review active cases at least once every 12 months to determine that:~~

- a. The client continues to be incapacitated;
- b. The client continues to be indigent; and
- c. There is no other proper or suitable person or entity to serve as guardian, conservator, or both guardian and conservator.

[~~3. 4.] Each public guardian program shall set priorities with regard to services to be provided to incapacitated persons in accordance with its contract with VDA.~~

[~~4. 5.] Each public guardian program shall develop written procedures and standards to make end-of-life decisions or other health-related interventions in accordance with the expressed desires and personal values of the incapacitated person to the extent known. If expressed desires or personal values are unknown, then written procedures [~~should~~, including an ethical decision-making process, shall be used to] ensure that the guardian or conservator acts in the incapacitated person's best~~

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interest and exercises reasonable care, diligence and prudence on behalf of the client.

[5- 6.] The public guardian program shall avoid even the appearance of a conflict of interest or impropriety when dealing with the needs of the incapacitated person. Impropriety or conflict of interest arises where the public guardian program has some personal or agency interest that might be perceived as self-serving or adverse to the position or the best interest of the incapacitated person. Examples include, but are not limited to, situations where the public guardian program provides services such as housing, hospice or medical care directly to the client. VDA reserves the right to monitor all administrative, programmatic, and financial activities related to the public guardian program to ensure compliance with the terms of the contract between VDA and the public guardian program.

[6- 7.] Each public guardian program and its employees are required to report any suspected abuse, neglect, or exploitation in accordance with §63.2-1606 of the Code of Virginia that provides for the protection of aged or incapacitated adults, mandates reporting, and provides for a penalty for failure to report.

[7- 8.] Each public guardian program shall submit data and reports as required by VDA and maintain compliance with VDA program guidelines. VDA shall periodically monitor administrative, programmatic, and financial activities related to the public guardian program to ensure compliance with the terms of the contract between the public guardian program and VDA.

22VAC5-30-40. Personnel standards.

A. Each paid staff who is working in the public guardian program and has direct contact with clients or client estates shall:

1. Complete an orientation program concerning guardian and conservator duties to include the following subjects:

- a. Privacy and confidentiality requirements;
- b. Recordkeeping;
- c. Services provided, and standards for these services;
- d. A historical and factual review about the needs of the elderly and people with disabilities; and
- e. Indications of and actions to be taken where adult abuse, neglect, or exploitation is suspected.

2. Have a satisfactory work record and be a person of good character; demonstrate a concern for the well-being of others to the extent that the individual is considered suitable to be entrusted with the care, guidance, and protection of an incapacitated person; and have not been convicted of any criminal offense involving any physical

attack, neglect or abuse of a person, lying, cheating, or stealing nor convicted of any felony. A criminal record check will be conducted on each person hired on or after January 1, 2009.

3. Be free of illegal drug use as confirmed by a drug screening test conducted prior to the assumption of any duties with an incapacitated person for each person hired on or after January 1, 2009.

4. Demonstrate, by objective criteria, knowledge of Virginia's guardianship laws and alternatives to guardianship. For each person hired on or after January 1, 2009, minimum education requirements apply and include a high school diploma or general education diploma (GED) from a Virginia accredited program and training or course work on (i) the duties and powers of guardians and conservators in Virginia, [including an understanding of surrogate decision making and how it differs from substituted judgment decision-making standards,] (ii) mandatory reporting requirements to the Department of Social Services and Commissioner of Accounts where applicable, and (iii) working with special needs populations including individuals with physical and mental disabilities. Program directors have additional requirements as specified in 22VAC5-30-30 C 1.

5. Participate in mandatory training programs required by VDA.

B. Volunteers.

1. Volunteers may be recruited and used to supplement paid staff. However, volunteers shall not be included in the public guardian program direct service ratio of 20 incapacitated persons to every one paid staff person as required under 22VAC5-30-30 D 1.

2. Volunteers may not exercise the authority of a guardian or conservator.

3. Each public guardian program that uses volunteers shall develop and implement written procedures for volunteer management and supervision including requirements that each volunteer shall:

a. Complete an orientation program that provides an overview of the Virginia Public Guardian and Conservator Program (§ [§] 2.2-711 et seq. of the Code of Virginia).

b. Complete an orientation program that provides an overview of the local public guardian program for which the person intends to serve as a volunteer, including (i) services provided by the local program, (ii) specific duties of the volunteer, (iii) privacy and confidentiality requirements, (iv) recordkeeping and documentation requirements, and (v) indications of and action to be taken where adult abuse, neglect, or exploitation is suspected.

c. Have a satisfactory work record and personal record and be a person of good character and have not been convicted of any criminal offense involving any physical attack, neglect or abuse of a person, lying, cheating, or stealing nor convicted of any felony. A criminal record check will be conducted on each volunteer accepted by the local program on or after January 1, 2009.

22VAC5-30-50. Recordkeeping.

A. Each public guardian program shall maintain an accurate and complete client record for each incapacitated person. Records shall be kept confidential. Access to client records shall be limited to the client's legal representative; as directed by court order; as directed by duly authorized government authorities or as specifically authorized by the Code of Virginia or federal statutes, including by written consent of the client's legal representative. Provision shall be made for the safe storage of client records or accurate and legible reproductions for a minimum of five years following termination of the guardian or conservator court order.

B. The client's record shall contain a Virginia Uniform Assessment Instrument (UAI) [or a similar comprehensive assessment instrument] , a care plan, a values history, the annual report by guardians submitted to the Department of Social Services as required by §37.2-1021 of the Code of Virginia, the annual accounting to the Commissioner of Accounts as required by §26-17.4 of the Code of Virginia, and all applicable court orders and petitions. A client's record shall be completed and on file within 60 days of the program's appointment as guardian.

C. Each public guardian program shall maintain all records, provide reports, including audit information and documents in accordance with its contract with VDA.

22VAC5-30-60. Evaluation and monitoring of public guardian programs.

VDA shall periodically administer, monitor, evaluate, provide technical assistance and expertise, and shall ensure fiscal accountability and quality of service of public guardian programs.

VA.R. Doc. No. R05-275; Filed July 23, 2008, 8:51 a.m.

STATE BOARD OF SOCIAL SERVICES

Proposed Regulation

Title of Regulation: 22VAC40-705. Child Protective Services (amending 22VAC40-705-10, 22VAC40-705-30, 22VAC40-705-40, 22VAC40-705-50, 22VAC40-705-70, 22VAC40-705-80, 22VAC40-705-120, 22VAC40-705-140, 22VAC40-705-150, 22VAC40-705-180).

Statutory Authority: §§63.2-217 and 63.2-1503 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until October 17, 2008.

Agency Contact: Nan McKenney, Child Protective Services Policy Supervisor, Department of Social Services, Division of Family Services, 7 N. Eighth Street, Richmond, VA 23219, telephone (804) 726-7569, FAX (804) 726-7895, TTY (800) 828-1120, or email nan.mckenney@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia delegates the authority and responsibility for promulgating child welfare regulations to the State Board of Social Services. Section 63.2-1503 instructs local departments of social services to staff CPS units and carry out the CPS program according to regulations adopted by the board.

Purpose: This regulatory action is essential to protect the health, safety or welfare of children at risk for child abuse or neglect by amending the CPS regulations to make them consistent with recent changes to the Code of Virginia pertaining to the CPS program.

The goal of this regulatory action is to amend existing CPS regulations and add new regulations to make the CPS regulations consistent with the Code of Virginia. These regulatory changes will clarify and strengthen the CPS program while balancing the rights of alleged abusers with protecting children and families. The proposed changes take into account the resources of local departments of social services to administer the CPS program.

Substance: The proposed regulatory action expands the definition of physical abuse to include children who are left alone with a person required to register as a violent sex offender. It requires the local department, upon request by the subject of an unfounded complaint of abuse or neglect, to advise the subject if the complaint was made anonymously.

The proposed regulatory action expands the definition of medical neglect by specifying that a decision by the parents or other person legally responsible for a child with a life-threatening condition to refuse a particular medical treatment shall not be deemed a refusal to provide necessary care if certain conditions are met.

The proposed regulatory action changes the length of time allowed to validate a CPS report from 14 to five days. It also clarifies that local departments of social services may conduct either investigations or family assessments in response to complaints of child abuse or neglect. Currently, regulations authorize local departments to conduct only investigations in response to complaints of child abuse or neglect. Risk assessments will be required with both family assessment responses and investigations.

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The proposed change will allow CPS workers to inform a Family Advocacy Program when a family assessment response in response to a valid CPS report has identified service needs, which may result in improved services to families and children. It clarifies that families may decline services offered as a result of either a family assessment or an investigation.

The proposed regulatory action requires reasonable diligence to locate a victim child when either of two conditions is met; the existing regulation requires reasonable diligence to locate a victim child when both conditions are met. These conditions are the existence of a founded investigation or a child protective services case opened pursuant to §63.2-1503 F of the Code of Virginia.

The proposed regulatory action affects several aspects of abuse or neglect investigations. It clarifies the requirement to tape victim and abuser interviews and the methods to record interviews. It establishes authority for local departments to conduct state criminal record checks as part of the investigation process. It provides that siblings of the victim and other children in the home are to be interviewed and observed by the CPS worker during the investigation; other children in the home of the victim child can offer valuable information to the CPS worker. The proposed regulatory action removes the requirement to observe the home environment of a victim in an Out of Family report and allows local departments discretion to determine when such observation is necessary.

The proposed regulatory action deletes the requirement that the local director or designee meet with the alleged abuser prior to a founded disposition being made; it clarifies that an alleged abuser may meet at any time with local department staff during the investigation to hear and refute the evidence.

The existing regulation provides only for the training of CPS workers and requires training to be completed within one year of employment. The proposed regulatory action adds supervisors to the employees that must be trained and extends the time to complete training to two years. It also confirms that required training includes family assessment response policy and skills.

Issues: The proposed regulatory action will enable local departments to use CPS staff resources more effectively when conducting investigations and family assessments. The proposed regulatory action will enable the department to more effectively assist local departments of social services to train local department staff by including CPS supervisors in the training plan and by increasing the length of time that CPS workers have to complete required training. The proposed regulatory action poses no disadvantage to the Commonwealth or to the public.

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

Summary of the Proposed Amendments to Regulation. The Board of Social Services (Board) proposes to make changes to the Child Protective Services (CPS) Regulation that include: (1) expanding the circumstances of physical neglect to include when a parent or other responsible person leaves a child under the age of 18 alone in the same dwelling as a person, not related by blood or marriage, who has been convicted of an offense against a minor for which registration as a violent sexual offender is required, (2) modifying the circumstances under which a caretaker is accused of medical neglect, (3) allowing a positive drug toxicology of the mother of a newborn infant indicating the presence of a controlled substance to be sufficient to suspect that a child is abused or neglected, (4) lowering the time that a local department has to either invalidate a complaint of abuse or neglect or begin an investigation/family assessment from 14 days to five days, (5) requiring the local department to, upon request, advise the person who was the subject of an unfounded investigation if the complaint or report was made anonymously, (6) requiring a CPS worker to conduct a face-to-face interview with and observe not just the alleged victim, but also his/her siblings, (7) allowing the requirement that the CPS worker visit the site where the alleged victim child lives be waived in complaints of child abuse and neglect involving caretakers outside of the home, (8) allowing local departments to obtain and consider statewide criminal history record information from the Central Criminal Records Exchange and use the results as evidence if a child abuse or neglect petition is filed in connection with the child's removal, (9) clarifying regulations regarding the opportunities for alleged abusers to consult with the local director or his designee to hear and refute the evidence, (10) allowing the CPS worker to notify the Family Advocacy Program representative in writing when a family assessment is conducted and the family is determined to be in need of services, (11) requiring that the department implement a uniform training plan for child CPS workers *and* for supervisors, and (12) changing the requirement that workers complete skills and policy training within the first year of their employment to require that they complete such skills and training within the first two years of their employment.

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. Section 63.2-217 of the Code of Virginia delegates the authority and responsibility for promulgating child welfare regulations to the State Board of Social Services. Section 63.2-1503 instructs local departments of social services to staff CPS units and carry out the CPS program according to regulations adopted by the Board.

Under current regulation, physical neglect occurs when there is a failure to provide food, clothing, shelter, or supervision

for a child to the extent that the child's health or safety is endangered, including abandonment or parental/caretaker absence. Under the proposed regulation, physical neglect would also explicitly include leaving a child alone in the same dwelling as a person, not related by blood or marriage, who has been convicted of an offense against a minor for which registration is required as a violent sexual offender (pursuant to §9-1.902). The cost of this amendment includes an increase in the number of parents/caretakers who are accused of physical neglect, and therefore a potential increase in the number of family assessments/investigations that must be pursued by local departments. The cost could also include the cost to parents/caretakers of finding alternative childcare. The benefits of keeping children safe from sexual assault, however, including saving the resources that will be spent in the future on physical or psychological medical care should assault take place, will outweigh any costs.

Under current regulation, medical neglect occurs when there is a failure by the caretaker to obtain or follow through with a complete regimen of medical, mental, or dental care for a condition which if untreated could result in illness or developmental delays. Under the proposed amendment, a decision by parents or other persons legally responsible for the child to refuse a particular medical treatment for a child with life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such decision is made jointly by the parents or other person legally responsible for the child and the child; (ii) the child has reached 14 years of age and is sufficiently mature to have an informed opinion on the subject of his medical treatment; (iii) the parents or other person legally responsible for the child and the child have considered alternative treatment options; and (iv) the parents or other person legally responsible for the child and the child believe in good faith that such a decision is in the child's best interest. This amendment implements statutory changes found in Chapters 479 and 597 of the 2007 Acts of Assembly. Under current regulation, each local department makes its own decision whether or not to report a refusal of medical care and claim medical neglect. The assessment of medical neglect, therefore, is left to the judiciary. This means that multiple jurisdictions could make different determinations of medical neglect in similar cases. In addition to the benefit that state-wide consistency will have on parental or caretaker decision-making processes, the economic benefits of this amendment lie mostly in saved court costs. The Department of Social Services (Department) might feel compelled to take to court parents whose 15 year-old son has refused, say, a second round of chemotherapy to treat cancer. The court case would be costly both to the state and to the parents of the minor, and is not likely to affect the likelihood of the child's survival. On the other hand, the amendment allows the Department to differentiate between a 15 year-old's refusal to undergo chemotherapy with little chance of success and a parent's potentially lethal decision not to provide a 9 year-old

antibiotics for strep throat. The cost of this amendment lies in the requirement for CPS workers to evaluate the medical situation for the conditions outlined above. Since most CPS workers already evaluate the medical situation in as careful a manner as this amendment would require, the amendment should add minimal, if any, cost. Therefore, the benefits of this change outweigh the costs.

Under the proposed amendment, a positive drug toxicology of the mother indicating the presence of a controlled substance would be enough to suspect that a newborn is abused or neglected. Since the amendment is not requiring local departments (or hospitals) to test women for drugs—it is simply allowing a positive drug toxicology to motivate an investigation or a family assessment—the amendment should not add any undue cost to the state or localities. The amendment will benefit local departments or hospitals in that they can choose to avoid the cost of testing a newborn if the mother tests positive. Therefore, the benefits should outweigh the cost of this proposed amendment.

Under current regulation, all complaints and reports of suspected child abuse and/or neglect must be recorded in the child abuse and neglect information system and either screened out or determined valid within 14 days of receipt. Since a report against a mother alleging abuse or neglect of a newborn can be invalidated if the mother provides evidence that she sought substance abuse counseling or treatment during her pregnancy, a mother has 14 days to present such evidence. Under the proposed amendment, local departments will have five days to either screen a report out or determine it valid and, therefore, mothers will have only five days to present evidence. The fourteen-day requirement has been around for 30+ years and is the result of a process that required local departments to mail the reports/complaints to the Department where staff would manually enter the reports into a system. Since the filing/communication systems have become electronic, 14 days is no longer required. According to the Department, since most local departments make a decision to invalidate or accept reports of complaints within five (business) days, this amendment will not change much in practice. Therefore, there will be neither costs nor benefits to this amendment; it simply reflects what is being done in practice.

Under current regulation, when the identity of a reporter (of child abuse or neglect) is known to the Department, or local department, these agencies must make every effort to protect the reporter's identity. If a person suspects that he is the subject of a report or complaint of child abuse and/or neglect made in bad faith or with malicious intent, that person may petition the court for access to the record including the identity of the reporter or complainant. Under the proposed amendment, the local department may, upon request, advise the person who was the subject of an unfounded investigation that the complaint or report was made anonymously (if, in

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fact, it was). According to the Department, this amendment was written to avoid the unnecessary court costs incurred by subjects of unfounded reports who go through the court to find out the reporter only to discover that the reporter was anonymous. The benefit of the amendment is the saving of court costs in these circumstances. There is little, if any, cost to the amendment.

Under current regulation, CPS workers are required to conduct a face-to-face interview with and observation of the alleged victim child. Under the proposed amendment, CPS workers would be required to conduct face-to-face interviews with and observations of both the alleged victim children and their siblings. According to the Department, these interviews are recommended in their CPS guidance documents and CPS workers already interview siblings, so this regulatory amendment will not change anything in practice. In addition, although the regulation does not specify that CPS workers need to interview only siblings who live with the alleged victim, the regulation also does not specify that CPS workers need to interview all siblings. The change just gives CPS workers the authority to interview siblings, if they deem necessary and as is currently practiced. Therefore, this change has neither costs nor benefits.

Under current regulation, the CPS worker must observe the environment where the alleged victim child lives. Under the proposed amendment, this requirement can be waived in complaints of child abuse and neglect involving caretakers in state licensed and religiously exempted child care centers, regulated and unregulated family day care homes, private and public schools, group residential facilities, hospitals, or institutions. This amendment frees CPS workers from being required to complete visits that are irrelevant to the suspected abuse or neglect, thereby saving CPS time and resources. There is no apparent cost associated with this amendment. Therefore, the benefits of this amendment outweigh the costs.

The proposed regulation will allow local departments to obtain and consider statewide criminal history record information from the Central Criminal Records Exchange on any individual who is the subject of a child abuse and neglect investigation where there is evidence of child abuse or neglect and the local department is evaluating the safety of the home and whether removal is necessary to ensure the child's safety. The local department may also obtain a criminal record check on all adult household members residing in the home of the alleged abuser and/or neglector and where the child lives, and all results may be admitted into evidence if a child abuse or neglect petition is filed in connection with the child's removal. According to the Department, the cost is about \$15 per search; however, the proposed regulation merely allows departments to obtain and consider the information, it does not mandate them to do so. Similarly, in amending the regulation to allow the CPS worker to notify the Family Advocacy Program representative in writing when a family assessment is conducted and the family is determined to be in

need of services, the Board is not adding monetary costs or benefits to local departments, since the regulation carries no mandate. The benefit of the changes is that the changes allow the local department to use the Central Criminal Records Exchange or notify the Family Advocacy Program representative if the local department determines that the benefits of such actions outweigh the costs. Therefore, the benefits outweigh the costs for both of these proposed amendments.

The Board also proposes to clarify the opportunities that the subject of an investigation has to meet with the local department. It proposes to delete language specifying when and how the alleged abuser has opportunities to consult with the local director and informally present testimony, witnesses, and documentation, and add in the following sentence: "The subject of the report or complaint may consult with the local department to hear and refute evidence collected during the investigation". The Board feels that the new language makes clear the rights of the alleged abuser to meet with the local department and present evidence at any point during the family assessment and investigation. The language is being changed because both subjects and local departments have expressed confusion about the type and timing of an interaction between the subject of an investigation and the local department regarding an investigation. It should not, however, change anything in practice. The Board felt that these changes increase the clarity of the regulation. This change should impose neither costs nor benefits.

Under current regulation, the Department must implement a uniform training plan that establishes minimum standards for all CPS workers in Virginia, and all workers must complete the skills and policy training within the first year of their employment. Under the proposed amendment, the Department would have to implement a training plan that establishes minimum standards for CPS workers and supervisors, and instead of having to complete the training within the first year of their employment, workers and supervisors would have two years to complete the training. Although being allowed two years to complete the training might make the training less burdensome for workers in the short-term, there is no reason to think that it will reduce the cost of the training for workers, since the amount of time that they spend in training and away from their normal activities will not change. If local departments have significant annual turnover, this amendment could reduce the number of individuals who end up having to be trained, but because the CPS programs are locally administered, the Department does not have information on staff turnover rates. Therefore, assuming that allowing workers two years to get the training will not affect the quality of work that they do, as far as we can quantify, there are neither costs nor benefits to this change for workers.

Although the training for supervisors has not yet been developed, and therefore the nature of the training is

unknown, the Department believes that the time required for the supervisor training will be similar to that required for workers. The training itself costs the state (actually, in the end, the federal government pays for the training of CPS workers and supervisors) around \$600 per worker per day. Currently, workers are required to have 17 days of training (four days CPS New Work Training with OASIS, three days Intake, Assessment, and Investigation in CPS, two days Sexual Abuse, three days Sexual Abuse Investigation, two days Out of Family Investigation, two days Understanding Domestic Violence, and one day Domestic Violence and its Impact on Children)¹, for a total of about \$10,200 per worker. Assuming that one day is equivalent to eight hours of training, this is a total of 136 hours of training. The mean hourly wage for social workers in Virginia is around \$20.² Supervisors probably make a little more, but as a low estimate, we will assume a wage of around \$20/hour. Therefore, the cost to local departments of requiring supervisors to attend the training is approximately \$2720 per supervisor (the cost is a one-time cost that can be spread out over the two years that supervisors would have to complete the training). In addition, currently all training courses are offered only in person (i.e., none of the trainings are internet-based), so the supervisors will be required, as the workers are currently required, to travel to one of the five area training centers that are located in Hampton, Richmond, Fairfax, Abington, and Roanoke.³ This means that the maximum distance a CPS worker/supervisor would have to travel is around 200 miles roundtrip. Therefore, the total cost per supervisor to attend the training is \$10,200 + \$2720, plus the cost of traveling 200 miles roundtrip to one of the five area training centers and the cost of food or hotel stay, as necessary. The \$2720, the cost of traveling 200 miles, and the food or hotel costs are the costs that must be borne by departments in Virginia.

According to the Department, the benefit of training the supervisors lies in the improved skills of CPS workers that will come from better supervisor-support and better oversight. The Board has had conversations for many years about the importance of adding supervisors to the training plans, as many other states have, citing the “trickle-down” benefits of supervisor training. Because these benefits are so difficult to quantify, however, it is not clear if the benefits outweigh the costs of implementing a supervisor training plan.

Businesses and Entities Affected. In fiscal year 2006, 47,130 children were reported as being neglected or abused and 40,959 caretakers were suspected of abusing or neglecting a child or children. Potentially, all children and all local law enforcement organizations could be affected by the proposed amendments.

Localities Particularly Affected. The proposal amendments affect all localities and do not disproportionately affect any specific localities in the Commonwealth.

Projected Impact on Employment. The proposed changes are not anticipated to have any impact on employment. Although the cost of having to train supervisors could have an effect on the number of CPS workers a local department employs, it does not seem likely that the costs incurred will be enough to significantly impact employment in local CPS departments.

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

Small Businesses: Costs and Other Effects. The proposed changes are not anticipated to add cost or otherwise affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments have no adverse impact on 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 Source: Department of Social Services

² Source: Bureau of Labor Statistics, http://www.bls.gov/oes/current/oes_va.htm

³ Source: Department of Social Services

[Agency's Response to the Department of Planning and Budget's Economic Impact Analysis](#): The Department of

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Social Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

This proposed amendments incorporate current Code of Virginia requirements and clarify existing regulations. These changes include (i) expanding the definitions of physical and medical neglect, (ii) clarifying the use of state criminal history searches in child protective services investigations, (iii) clarifying the requirement to electronically record victim interviews and the exceptions to that requirement, (iv) revising the length of time local departments have to validate a report or complaint, and (v) amending training requirements.

22VAC40-705-10. Definitions.

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

"Abuser or neglector" means any person who is found to have committed the abuse and/or neglect of a child pursuant to Chapter 15 (§63.2-1500 et seq.) of Title 63.2 of the Code of Virginia.

"Administrative appeal rights" means the child protective services appeals procedures for a local level informal conference and a state level hearing pursuant to §63.2-1526 of the Code of Virginia, under which an individual who is found to have committed abuse and/or neglect may request that the local department's records be amended.

"Alternative treatment options" means treatments used to prevent or treat illnesses or promote health and well-being outside the realm of modern conventional medicine.

"Appellant" means anyone who has been found to be an abuser and/or neglector and appeals the founded disposition to the director of the local department of social services, an administrative hearing officer, or to circuit court.

"Assessment" means the process by which child protective services workers determine a child's and family's needs.

"Caretaker" means any individual having the responsibility of providing care for a child and includes the following: (i) parent or other person legally responsible for the child's care; (ii) any other person who has assumed caretaking responsibility by virtue of an agreement with the legally responsible person; (iii) persons responsible by virtue of their positions of conferred authority; and (iv) adult persons residing in the home with the child.

"Case record" means a collection of information maintained by a local department, including written material, letters, documents, tapes, photographs, film or other materials regardless of physical form about a specific child protective services investigation, family or individual.

"Central Registry" means a subset of the child abuse and neglect information system and is the name index with identifying information of individuals named as an abuser and/or neglector in founded child abuse and/or neglect complaints or reports not currently under administrative appeal, maintained by the department.

"Certified substance abuse counselor" means a person certified to provide substance abuse counseling in a state-approved public or private substance abuse program or facility.

"Child abuse and neglect information system" means the computer system which collects and maintains information regarding incidents of child abuse and neglect involving parents or other caretakers. The computer system is composed of three parts: the statistical information system with nonidentifying information, the Central Registry of founded complaints not on appeal, and a database that can be accessed only by the department and local departments that contains all nonpurged CPS reports. This system is the official state automated system.

"Child protective services" means the identification, receipt and immediate response to complaints and reports of alleged child abuse and/or neglect for children under 18 years of age. It also includes assessment, and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child protective services worker" means one who is qualified by virtue of education, training and supervision and is employed by the local department to respond to child protective services complaints and reports of alleged child abuse and/or neglect.

"Chronically and irreversibly comatose" means a condition caused by injury, disease or illness in which a patient has suffered a loss of consciousness with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner other than reflexive activity of muscles and nerves for low-level conditioned response and from which to a reasonable degree of medical probability there can be no recovery.

"Collateral" means a person whose personal or professional knowledge may help confirm or rebut the allegations of child abuse and/or neglect or whose involvement may help ensure the safety of the child.

"Complaint" means any information or allegation of child abuse and/or neglect made orally or in writing pursuant to §63.2-100 of the Code of Virginia.

"Consultation" means the process by which the alleged abuser and/or neglector may request an informal meeting to discuss the investigative findings with the local department prior to the local department rendering a founded disposition

of abuse and/or neglect against that person pursuant to §63.2-1526 A of the Code of Virginia.

"Controlled substance" means a drug, substance or marijuana as defined in §18.2-247 of the Code of Virginia including those terms as they are used or defined in the Drug Control Act, Chapter 34 (§54.1-3400 et seq.) of Title 54.1 of the Code of Virginia. The term does not include alcoholic beverages or tobacco as those terms are defined or used in Title 3.1 or Title 4.1 of the Code of Virginia.

"Department" means the Virginia Department of Social Services.

"Differential response system" means that local departments of social services may respond to valid reports or complaints of child abuse or neglect by conducting either a family assessment or an investigation.

"Disposition" means the determination of whether or not child abuse and/or neglect has occurred.

"Documentation" means information and materials, written or otherwise, concerning allegations, facts and evidence.

"Family Advocacy Program representative" means the professional employed by the United States Armed Forces who has responsibility for the program designed to address prevention, identification, evaluation, treatment, rehabilitation, follow-up and reporting of family violence, pursuant to 22VAC40-720-20.

"Family assessment" means the collection of information necessary to determine:

1. The immediate safety needs of the child;
2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;
3. Risk of future harm to the child; and
4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services. These arrangements may be made in consultation with the caretaker(s) of the child.

"First source" means any direct evidence establishing or helping to establish the existence or nonexistence of a fact. Indirect evidence and anonymous complaints do not constitute first source evidence.

"Founded" means that a review of the facts shows by a preponderance of the evidence that child abuse and/or neglect has occurred. A determination that a case is founded shall be based primarily on first source evidence; in no instance shall a determination that a case is founded be based solely on indirect evidence or an anonymous complaint.

"He" means he or she.

"His" means his or her.

"Identifying information" means name, social security number, address, race, sex, and date of birth.

"Indirect evidence" means any statement made outside the presence of the child protective services worker and relayed to the child protective services worker as proof of the contents of the statement.

"Informed opinion" means that the child has been informed and understands the benefits and risks, to the extent known, of the treatment recommended by conventional medical providers for his condition and the alternative treatment being considered as well as the basis of efficacy for each, or lack thereof.

"Investigation" means the collection of information to determine:

1. The immediate safety needs of the child;
2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;
3. Risk of future harm to the child;
4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services;
5. Whether or not abuse or neglect has occurred;
6. If abuse or neglect has occurred, who abused or neglected the child; and
7. A finding of either founded or unfounded based on the facts collected during the investigation.

"Investigative narrative" means the written account of the investigation contained in the child protective services case record.

"Legitimate interest" means a lawful, demonstrated privilege to access the information as defined in §63.2-104 of the Code of Virginia.

"Licensed substance abuse treatment practitioner" means a person who (i) is trained in and engages in the practice of substance abuse treatment with individuals or groups of individuals suffering from the effects of substance abuse or dependence, and in the prevention of substance abuse or dependence and (ii) is licensed to provide advanced substance abuse treatment and independent, direct and unsupervised treatment to such individuals or groups of individuals, and to plan, evaluate, supervise, and direct substance abuse treatment provided by others.

"Life-threatening condition" means a condition that if left untreated more likely than not will result in death and for which the recommended medical treatments carry a probable

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chance of impairing the health of the individual or a risk of terminating the life of the individual.

"Local department" means the city or county local agency of social services or department of public welfare in the Commonwealth of Virginia responsible for conducting investigations or family assessments of child abuse and/or neglect complaints or reports pursuant to §63.2-1503 of the Code of Virginia.

"Local department of jurisdiction" means the local department in the city or county in Virginia where the alleged victim child resides or in which the alleged abuse and/or neglect is believed to have occurred. If neither of these is known, then the local department of jurisdiction shall be the local department in the county or city where the abuse and/or neglect was discovered.

"Mandated reporters" means those persons who are required to report suspicions of child abuse and/or neglect pursuant to §63.2-1509 of the Code of Virginia.

"Monitoring" means contacts with the child, family and collaterals which provide information about the child's safety and the family's compliance with the service plan.

"Multidisciplinary teams" means any organized group of individuals representing, but not limited to, medical, mental health, social work, education, legal and law enforcement, which will assist local departments in the protection and prevention of child abuse and neglect pursuant to §63.2-1503 K of the Code of Virginia. Citizen representatives may also be included.

"Notification" means informing designated and appropriate individuals of the local department's actions and the individual's rights.

"Particular medical treatment" means a process or procedure that is recommended by conventional medical providers and accepted by the conventional medical community.

"Preponderance of evidence" means the evidence as a whole shows that the facts are more probable and credible than not. It is evidence which is of greater weight or more convincing than the evidence offered in opposition.

"Purge" means to delete or destroy any reference data and materials specific to subject identification contained in records maintained by the department and the local department pursuant to §§63.2-1513 and 63.2-1514 of the Code of Virginia.

"Reasonable diligence" means the exercise of justifiable and appropriate persistent effort.

"Report" means either a complaint as defined in this section or an official document on which information is given concerning abuse and neglect. A report is required to be made by persons designated herein and by local departments in those situations in which a response to a complaint from the

general public reveals suspected child abuse and/or neglect pursuant to subdivision 5 of the definition of abused or neglected child in §63.2-100 of the Code of Virginia.

"Safety plan" means an immediate course of action designed to protect a child from abuse or neglect.

"Service plan" means a plan of action to address the service needs of a child and/or his family in order to protect a child and his siblings, to prevent future abuse and neglect, and to preserve the family life of the parents and children whenever possible.

"State automated system" means the "child abuse and neglect information system" as previously defined.

"Substance abuse counseling or treatment services" are services provided to individuals for the prevention, diagnosis, treatment, or palliation of chemical dependency, which may include attendant medical and psychiatric complications of chemical dependency.

"Sufficiently mature" is determined on a case-by-case basis and means that a child has no impairment of his cognitive ability and is of a maturity level capable of having intelligent views on the subject of his health condition and medical care.

"Terminal condition" means a condition caused by injury, disease or illness from which to a reasonable degree of medical probability a patient cannot recover and (i) the patient's death is imminent or (ii) the patient is chronically and irreversibly comatose.

"Unfounded" means that a review of the facts does not show by a preponderance of the evidence that child abuse or neglect occurred.

"Valid report or complaint" means the local department of social services has evaluated the information and allegations of the report or complaint and determined that the local department shall conduct an investigation or family assessment because the following elements are present:

1. The alleged victim child or children are under the age of 18 at the time of the complaint or report;
2. The alleged abuser is the alleged victim child's parent or other caretaker;
3. The local department receiving the complaint or report is a local department of jurisdiction; and
4. The circumstances described allege suspected child abuse or neglect.

"Withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening condition by providing treatment (including appropriate nutrition, hydration, and medication) which in the treating physician's or physicians' reasonable medical judgment will most likely be effective in ameliorating or correcting all such conditions.

22VAC40-705-30. Types of abuse and neglect.

A. Physical abuse occurs when a caretaker creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon a child a physical injury by other than accidental means or creates a substantial risk of death, disfigurement, or impairment of bodily functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of §18.2-248 of the Code of Virginia.

B. Physical neglect occurs when there is the failure to provide food, clothing, shelter, or supervision for a child to the extent that the child's health or safety is endangered. This also includes abandonment and situations where the parent's or caretaker's own incapacitating behavior or absence prevents or severely limits the performing of child caring tasks pursuant to §63.2-100 of the Code of Virginia. This also includes a child under the age of 18 whose parent or other person responsible for his care knowingly leaves the child alone in the same dwelling as a person, not related by blood or marriage, who has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to §9.1-902 of the Code of Virginia. In situations where the neglect is the result of family poverty and there are no outside resources available to the family, the parent or caretaker shall not be determined to have neglected the child; however, the local department may provide appropriate services to the family.

1. Physical neglect may include multiple occurrences or a one-time critical or severe event that results in a threat to health or safety.

2. Physical neglect may include failure to thrive.

a. Failure to thrive occurs as a syndrome of infancy and early childhood which is characterized by growth failure, signs of severe malnutrition, and variable degrees of developmental retardation.

b. Failure to thrive can only be diagnosed by a physician and is caused by nonorganic factors.

C. Medical neglect occurs when there is the failure by the caretaker to obtain or follow through with a complete regimen of medical, mental or dental care for a condition which if untreated could result in illness or developmental delays pursuant to §63.2-100 of the Code of Virginia. However, a decision by parents or other persons legally responsible for the child to refuse a particular medical treatment for a child with life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such decision is made jointly

by the parents or other person legally responsible for the child and the child; (ii) the child has reached 14 years of age and sufficiently mature to have an informed opinion on the subject of his medical treatment; (iii) the parents or other person legally responsible for the child and the child have considered alternative treatment options; and (iv) the parents or other person legally responsible for the child and the child believe in good faith that such decision is in the child's best interest. Medical neglect also includes withholding of medically indicated treatment.

1. A child who, in good faith, is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination pursuant to §63.2-100 of the Code of Virginia shall not for that reason alone be considered a neglected child.

2. For the purposes of this regulation, "withholding of medically indicated treatment" does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when in the treating physician's or physicians' reasonable medical judgment:

- a. The infant is chronically and irreversibly comatose;
- b. The infant has a terminal condition and the provision of such treatment would:

(1) Merely prolong dying;

(2) Not be effective in ameliorating or correcting all of the infant's life-threatening conditions;

(3) Otherwise be futile in terms of the survival of the infant; or

(4) Be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

D. Mental abuse or neglect occurs when a caretaker creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon a child a mental injury by other than accidental means or creates a substantial risk of impairment of mental functions.

Mental abuse or neglect may include failure to thrive.

1. Failure to thrive occurs as a syndrome of infancy and early childhood which is characterized by growth failure, signs of severe malnutrition, and variable degrees of developmental retardation.

2. Failure to thrive can only be diagnosed by a physician and is caused by nonorganic factors.

E. Sexual abuse occurs when there is any act of sexual exploitation or any sexual act upon a child in violation of the law which is committed or allowed to be committed by the

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child's parents or other persons responsible for the care of the child pursuant to §63.2-100 of the Code of Virginia.

22VAC40-705-40. Complaints and reports of suspected child abuse and/or neglect.

A. Persons who are mandated to report are those individuals defined in §63.2-1509 of the Code of Virginia.

1. Mandated reporters shall report immediately any suspected abuse or neglect that they learn of in their professional capacity.

2. Mandated reporters shall disclose all information that is the basis for the suspicion of child abuse or neglect and shall make available, upon request, to the local department any records and reports that document the basis for the complaint and/or report.

3. A mandated reporter's failure to report within 72 hours of the first suspicion of child abuse or neglect shall result in a fine.

4. Pursuant to §63.2-1509 B of the Code of Virginia, certain specified facts indicating that a newborn infant may have been exposed to controlled substances prior to birth or a positive drug toxicology of the mother indicating the presence of a controlled substance are sufficient to suspect that a child is abused or neglected. A diagnosis of fetal alcohol syndrome is also sufficient. Any report made pursuant to §63.2-1509 A of the Code of Virginia constitutes a valid report of abuse or neglect and requires a child protective services investigation or family assessment, unless the mother sought treatment or counseling as required in this section and pursuant to §63.2-1505 B of the Code of Virginia.

a. The attending physician may designate a hospital staff person to make the report to the local department on behalf of the attending physician. That hospital staff person may include a nurse or hospital social worker.

b. Pursuant to §63.2-1509 of the Code of Virginia, whenever a physician makes a finding pursuant to §63.2-1509 A of the Code of Virginia, then the physician or his designee must make a report to child protective services immediately. Pursuant to §63.2-1509 D of the Code of Virginia, a physician who fails to make a report pursuant to §63.2-1509 A of the Code of Virginia is subject to a fine.

c. When a report or complaint alleging abuse or neglect is made pursuant to §63.2-1509 A of the Code of Virginia, then the local department must immediately assess the infant's circumstances and any threat to the infant's health and safety. Pursuant to 22VAC40-705-110 A, the local department must conduct an initial assessment.

d. When a report or complaint alleging abuse or neglect is made pursuant to §63.2-1509 A of the Code of Virginia, then the local department must immediately determine whether to petition a juvenile and domestic relations district court for any necessary services or court orders needed to ensure the safety and health of the infant.

e. Within ~~the first 14~~ five days of receipt of a report made pursuant to §63.2-1509 A of the Code of Virginia, the local department shall invalidate the complaint if the following two conditions are met: (i) the mother of the infant sought substance abuse counseling or treatment during her pregnancy prior to the infant's birth and (ii) there is no evidence of child abuse and/or neglect by the mother after the infant's birth.

(1) The local department must notify the mother immediately upon receipt of a complaint made pursuant to §63.2-1509 A of the Code of Virginia. This notification must include a statement informing the mother that, if the mother fails to present evidence within 44 five days of receipt of the complaint that she sought substance abuse counseling/treatment during the pregnancy, the report will be accepted as valid and an investigation or family assessment initiated.

(2) If the mother sought counseling or treatment but did not receive such services, then the local department must determine whether the mother made a substantive effort to receive substance abuse treatment before the child's birth. If the mother made a substantive effort to receive treatment or counseling prior to the child's birth, but did not receive such services due to no fault of her own, then the local department should invalidate the complaint or report.

(3) If the mother sought or received substance abuse counseling or treatment, but there is evidence, other than exposure to a controlled substance, that the child may be abused or neglected, then the local department may initiate the investigation or family assessment.

f. Substance abuse counseling or treatment includes, but is not limited to, education about the impact of alcohol, controlled substances and other drugs on the fetus and on the maternal relationship; education about relapse prevention to recognize personal and environmental cues which may trigger a return to the use of alcohol or other drugs.

g. The substance abuse counseling or treatment should attempt to serve the purposes of improving the pregnancy outcome, treating the substance abuse disorder, strengthening the maternal relationship with existing children and the infant, and achieving and maintaining a sober and drug-free lifestyle.

h. The substance abuse counseling or treatment services must be provided by a professional. Professional substance abuse treatment or counseling may be provided by a certified substance abuse counselor or a licensed substance abuse treatment practitioner.

i. Facts indicating that the infant may have been exposed to controlled substances prior to birth are not sufficient, in and of themselves, to render a founded disposition of abuse or neglect. The local department must establish, by a preponderance of the evidence, that the infant was abused or neglected according to the statutory and regulatory definitions of abuse and neglect.

j. The local department may provide assistance to the mother in locating and receiving substance abuse counseling or treatment.

B. Persons who may report child abuse and/or neglect include any individual who suspects that a child is being abused and/or neglected pursuant to §63.2-1510 of the Code of Virginia.

C. Complaints and reports of child abuse and/or neglect may be made anonymously. An anonymous complaint, standing alone, shall not meet the preponderance of evidence standard necessary to support a founded determination.

D. Any person making a complaint and/or report of child abuse and/or neglect shall be immune from any civil or criminal liability in connection therewith, unless the court decides that such person acted in bad faith or with malicious intent pursuant to §63.2-1512 of the Code of Virginia.

E. When the identity of the reporter is known to the department or local department, these agencies shall make every effort to protect the reporter's identity. Upon request, the local department shall advise the person who was the subject of an unfounded investigation if the complaint or report was made anonymously.

F. If a person suspects that he is the subject of a report or complaint of child abuse and/or neglect made in bad faith or with malicious intent, that person may petition the court for access to the record including the identity of the reporter or complainant pursuant to §63.2-1514 of the Code of Virginia.

G. Any person age 14 years or older who makes or causes to be made a knowingly false complaint or report of child abuse and/or neglect and is convicted shall be guilty of a Class 1 misdemeanor for a first offense pursuant to §63.2-1513 of the Code of Virginia.

1. A subsequent conviction results in a Class 6 felony.
2. Upon receipt of notification of such conviction, the department will retain a list of convicted reporters.
3. The subject of the records may have the records purged upon presentation of proof of such conviction.

H. To make a complaint or report of child abuse and/or neglect, a person may telephone the department's toll-free child abuse and neglect hotline or contact a local department of jurisdiction pursuant to §63.2-1510 of the Code of Virginia.

1. The local department of jurisdiction that first receives a complaint or report of child abuse and/or neglect shall assume responsibility to ensure that a family assessment or an investigation is conducted.

2. A local department may ask another local department that is a local department of jurisdiction to assist in conducting the family assessment or investigation. If assistance is requested, the local department shall comply.

3. A local department may ask another local department through a cooperative agreement to assist in conducting the family assessment or investigation.

4. If a local department employee is suspected of abusing and/or neglecting a child, the complaint or report of child abuse and/or neglect shall be made to the juvenile and domestic relations district court of the county or city where the alleged abuse and/or neglect was discovered. The judge shall assign the report to a local department that is not the employer of the subject of the report pursuant to §§63.2-1509 and 63.2-1510 of the Code of Virginia. The judge may consult with the department in selecting a local department to respond.

22VAC40-705-50. Actions to be taken upon receipt of a complaint or report.

A. All complaints and reports of suspected child abuse and/or neglect shall be recorded in the child abuse and neglect information system and either screened out or determined valid within 44 five days of receipt. A record of all reports and complaints made to a local department or to the department, regardless of whether the report or complaint was found to be a valid complaint of abuse and/or neglect, shall be retained for one year from the date of the complaint.

B. In all valid complaints or reports of child abuse and/or neglect the local department of social services shall determine whether to conduct an investigation or a family assessment. A valid complaint or report is one in which:

1. The alleged victim child or children are under the age of 18 at the time of the complaint and/or report;
2. The alleged abuser is the alleged victim child's parent or other caretaker;
3. The local department receiving the complaint or report is a local department of jurisdiction; and
4. The circumstances described allege suspected child abuse and/or neglect as defined in §63.2-100 of the Code of Virginia.

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C. The local department shall not conduct a family assessment or investigate complaints or reports of child abuse and/or neglect that fail to meet all of the criteria in subsection B of this section.

D. The local department shall report certain cases of suspected child abuse or neglect to the local attorney for the Commonwealth and the local law-enforcement agency pursuant to §63.2-1503 D of the Code of Virginia.

E. Pursuant to §63.2-1503 J of the Code of Virginia, local departments shall develop, where practical, memoranda of understanding for responding to reports of child abuse and neglect with local law enforcement and the local office of the commonwealth's attorney.

F. The local department shall report to the following when the death of a child is involved:

1. When abuse and/or neglect is suspected in any case involving the death of a child, the local department shall report the case immediately to the regional medical examiner pursuant to §63.2-1503 E of the Code of Virginia.

2. When abuse and/or neglect is suspected in any case involving the death of a child, the local department shall report the case immediately to the attorney for the Commonwealth and the local law-enforcement agency pursuant to §63.2-1503 D of the Code of Virginia.

3. The local department shall contact the department immediately upon receiving a complaint involving the death of a child and at the conclusion of the investigation.

4. The department shall immediately, upon receipt of information, report on all child fatalities to the state board in a manner consistent with department policy and procedures approved by the board. At a minimum, the report shall contain information regarding any prior statewide child protective services involvement of the family, alleged perpetrator, or victim.

G. Valid complaints or reports shall be screened for high priority based on the following:

1. The immediate danger to the child;
2. The severity of the type of abuse or neglect alleged;
3. The age of the child;
4. The circumstances surrounding the alleged abuse or neglect;
5. The physical and mental condition of the child; and
6. Reports made by mandated reporters.

H. The local department shall initiate an immediate response. The response shall be a family assessment or an investigation. Any valid report may be investigated, but in accordance with §63.2-1506 C of the Code of Virginia, those

cases shall be investigated that involve: (i) sexual abuse, (ii) a child fatality, (iii) abuse or neglect resulting in a serious injury as defined in §18.2-371.1 of the Code of Virginia, (iv) a child having been taken into the custody of the local department of social services, or (v) a caretaker at a state-licensed child day care center, religiously exempt child day center, regulated family day home, private or public school, or hospital or any institution.

1. The purpose of an investigation is to collect the information necessary to determine or assess the following:

- a. Immediate safety needs of the child;
- b. Whether or not abuse or neglect has occurred;
- c. Who abused or neglected the child;
- d. To what extent the child is at risk of future harm, either immediate or longer term;
- e. What types of services can meet the needs of this child or family; and
- f. If services are indicated and the family appears to be unable or unwilling to participate in services, what alternate plans will provide for the child's safety.

2. The purpose of a family assessment is to engage the family in a process to collect the information necessary to determine or assess the following:

- a. Immediate safety needs of the child;
- b. The extent to which the child is at risk of future harm, either immediate or longer term;
- c. The types of services that can meet the needs of this child or family; and
- d. If services are indicated and the family appears to be unable or unwilling to participate in services, the plans that will be developed in consultation with the family to provide for the child's safety. These arrangements may be made in consultation with the caretaker(s) of the child.

3. The local department shall use reasonable diligence to locate any child for whom a report or complaint of suspected child abuse and/or neglect has been received and determined valid or persons who are the subject of a valid report if the whereabouts of such persons are unknown to the local department pursuant to §63.2-1503 F of the Code of Virginia.

4. The local department shall document its attempts to locate the child and family.

5. In the event the alleged victim child or children cannot be found, the time the child cannot be found shall not be computed as part of the 45-60-day time frame to complete the investigation, pursuant to subdivision 5 of §63.2-1505 of the Code of Virginia.

22VAC40-705-70. Collection of information.

A. When conducting an investigation the local department shall seek first-source information about the allegation of child abuse and/or neglect. When applicable, the local department shall include in the case record: police reports; depositions; photographs; physical, medical and psychological reports; and any ~~tape~~ electronic recordings of interviews.

B. When completing a family assessment, the local department shall gather all relevant information in collaboration with the family, to the degree possible, in order to determine the child and family services needs related to current safety or future risk of harm to the child.

C. All information collected must be entered in the state automated system and maintained according to §63.2-1514 for unfounded investigations or family assessments or according to 22VAC40-700-30 for founded investigations. The automated record entered in the statewide automation system is the official record. When documentation is not available in electronic form, it must be maintained in the hard copy portion of the record. Any hard copy information, including photographs and recordings, shall be noted as an addendum to the official record.

22VAC40-705-80. Family assessment and investigation contacts.

A. During the course of the family assessment, the child protective services (CPS) worker shall make and record the following contacts and observations.

1. The child protective services worker shall conduct a face-to-face interview with and observe the alleged victim child and siblings.
2. The child protective services worker shall conduct a face-to-face interview with the alleged victim child's parents or guardians and/or any caretaker named in the report.
3. The child protective services worker shall observe the family environment, contact pertinent collaterals, and review pertinent records in consultation with the family.

B. During the course of the investigation, the child protective services (CPS) worker shall make and record in writing in the state automated system the following contacts and observations. When any of these contacts or observations is not made, the CPS worker shall record in writing why the specific contact or observation was not made.

1. The child protective services worker shall conduct a face-to-face interview with and observation of the alleged victim child and siblings. All interviews with alleged victim children must be ~~audio-tape~~ electronically recorded except when the child protective services worker determines that:

- a. The child's safety may be endangered by ~~audio-taping~~ electronically recording his statement;
- b. The age and/or developmental capacity of the child makes ~~audio-taping~~ electronic recording impractical;
- c. A child refuses to participate in the interview if ~~audio-taping~~ electronic recording occurs; or
- d. ~~In the context of a team investigation with law-enforcement personnel, the team or team leader determines that audio-taping is not appropriate. The local Commonwealth Attorney determines that electronic recording of the victim interview during the CPS investigation is not appropriate in the context of the criminal investigation.~~
- e. The victim provided new information as part of a family assessment and it would be detrimental to reinterview the victim and the child protective services worker provides a detailed narrative of the interview in the investigation record.

In the case of an interview conducted with a nonverbal child where none of the above exceptions apply, it is appropriate to ~~audio-tape~~ electronically record the questions being asked by the child protective services worker and to describe, either verbally or in writing, the child's responses. A child protective services worker shall document in detail in the record and discuss with supervisory personnel the basis for a decision not to ~~audio-tape~~ electronically record an interview with the alleged victim child.

A child protective services finding may be based on the written narrative of the child protective services worker in cases where an ~~audio~~ electronic recording is unavailable due to equipment failure or ~~other-cause~~ the above exceptions.

2. The child protective services (CPS) worker shall conduct a face-to-face interview with the alleged abuser and/or neglecter.
 - a. The CPS worker shall inform the alleged abuser and/or neglecter of his right to tape record any communication pursuant to §63.2-1516 of the Code of Virginia.
 - b. ~~The~~ If requested by the alleged abuser and/or neglecter, the local department shall provide the necessary equipment in order to ~~tape~~ electronically record the interview and retain a copy of the ~~tape for the record~~ electronic recording.
3. The child protective services worker shall conduct a face-to-face interview with the alleged victim child's parents or guardians.
4. The child protective services worker shall observe the environment where the alleged victim child lives. This

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requirement may be waived in complaints of child abuse and neglect involving caretakers in state licensed and religiously exempted child care centers, regulated and unregulated family day care homes, private and public schools, group residential facilities, hospitals or institutions.

5. The child protective services worker shall observe the site where the alleged incident took place.

6. The child protective services worker shall conduct interviews with collaterals who have pertinent information relevant to the investigation and the safety of the child.

7. Pursuant to §63.2-1505 of the Code of Virginia, local departments may obtain and consider statewide criminal history record information from the Central Criminal Records Exchange on any individual who is the subject of a child abuse and neglect investigation where there is evidence of child abuse or neglect and the local department is evaluating the safety of the home and whether removal is necessary to ensure the child's safety. The local department may also obtain a criminal record check on all adult household members residing in the home of the alleged abuser and/or neglector and where the child visits. Pursuant to §19.2-389 of the Code of Virginia, local departments are authorized to receive criminal history information on the person who is the subject of the investigation as well as other adult members of the household for the purposes in §63.2-1505 of the Code of Virginia. The results of the criminal record history search may be admitted into evidence if a child abuse or neglect petition is filed in connection with the child's removal. Local departments are prohibited from dissemination of this information excepted as authorized by the Code of Virginia.

22VAC40-705-120. Complete the family assessment or investigation.

A. The local department shall promptly notify the alleged abuser and/or neglector and the alleged victim's parents or guardians of any extension of the deadline for the completion of the family assessment or investigation pursuant to §63.2-1506 B 3 or subdivision 5 of §63.2-1505 of the Code of Virginia. The child protective services worker shall document the notifications and the reason for the need for additional time in the case record.

B. At the completion of the family assessment, the subject of the report shall be notified orally and in writing of the results of the assessment.

C. The subject of the report shall be notified immediately if during the course of completing the family assessment the situation is reassessed and determined to meet the requirements, as specified in §63.2-1506 B of the Code of Virginia, to be investigated.

~~D. When completing an investigation, prior to rendering a founded disposition concerning a complaint of child abuse and/or neglect, the local department shall provide an opportunity for the alleged abuser and/or neglector to have a local consultation with the local director or his designee to hear and refute the evidence supporting a founded disposition. The subject of the report or complaint may consult with the local department to hear and refute evidence collected during the investigation. Whenever a criminal charge is also filed against the alleged abuser for the same conduct involving the same victim child as investigated by the local department, sharing the evidence prior to the court hearing is prohibited.~~

~~1. The alleged abuser and/or neglector shall be afforded the opportunity to informally present testimony, witnesses or documentation to representatives of the local department.~~

~~2. The local department shall consider any evidence presented by the alleged abuser and/or neglector prior to rendering a disposition.~~

E. Local conference.

1. If the alleged abuser and/or neglector is found to have committed abuse or neglect, that alleged abuser and/or neglector may, within 30 days of being notified of that determination, submit a written request for an amendment of the determination and the local department's related records pursuant to §63.2-1526 A of the Code of Virginia. The local department shall conduct an informal conference in an effort to examine the local department's disposition and reasons for it and consider additional information about the investigation and disposition presented by the alleged abuser and/or neglector.

2. The local conference shall be conducted in accordance with 22VAC40-705-190.

22VAC40-705-140. Notification of findings.

A. Upon completion of the investigation the local child protective services worker shall make notifications as provided in this section.

B. Individual against whom allegations of abuse and/or neglect were made.

1. When the disposition is unfounded, the child protective services worker shall inform the individual against whom allegations of abuse and/or neglect were made of this finding. This notification shall be in writing with a copy to be maintained in the case record. The individual against whom allegations of abuse and/or neglect were made shall be informed that he may have access to the case record and that the case record shall be retained by the local department for one year unless requested in writing by such individual that the local department retain the record for up to an additional two years.

a. If the individual against whom allegations of abuse and/or neglect were made or the subject child is involved in subsequent complaints, the information from all complaints shall be retained until the last purge date has been reached.

b. The local worker shall notify the individual against whom allegations of abuse and/or neglect were made of the procedures set forth in §63.2-1514 of the Code of Virginia.

c. When an unfounded investigation involves a child death, the child protective services worker shall inform the individual against whom allegations of abuse and/or neglect were made that the case record will be retained for the longer of 12 months or until the State Child Fatality Review Team has completed its review of the case pursuant to §32.1-283.1 D of the Code of Virginia.

2. When the abuser and/or neglector in a founded complaint is a foster parent of the victim child, the local department shall place a copy of this notification letter in the child's foster care record and in the foster home provider record.

3. No disposition of founded or unfounded shall be made in a family assessment. At the completion of the family assessment the subject of the report shall be notified orally and in writing of the results of the assessment.

C. Subject child's parents or guardian.

1. When the disposition is unfounded, the child protective services worker shall inform the parents or guardian of the subject child in writing, when they are not the individuals against whom allegations of child abuse and/or neglect were made, that the complaint involving their child was determined to be unfounded and the length of time the child's name and information about the case will be maintained. The child protective services worker shall file a copy in the case record.

2. When the disposition is founded, the child protective services worker shall inform the parents or guardian of the child in writing, when they are not the abuser and/or neglector, that the complaint involving their child was determined to be founded and the length of time the child's name and information about the case will be retained in the Central Registry. The child protective services worker shall file a copy in the case record.

3. When the founded case of abuse or neglect does not name the parents or guardians of the child as the abuser or neglector and when the abuse or neglect occurred in a licensed or unlicensed day care center, a regulated family day home, a private or public school, a child-caring institution or a residential facility for juveniles, the parent or guardian must be consulted and must give permission

for the child's name to be entered into the central registry pursuant to §63.2-1515 of the Code of Virginia.

D. Complainant.

1. When an unfounded disposition is made, the child protective services worker shall notify the complainant, when known, in writing that the complaint was investigated and determined to be unfounded. The worker shall file a copy in the case record.

2. When a founded disposition is made, the child protective services worker shall notify the complainant, when known, in writing that the complaint was investigated and necessary action was taken. The local worker shall file a copy in the case record.

3. When a family assessment is completed, the child protective services worker shall notify the complainant, when known, that the complaint was assessed and necessary action taken.

E. Family Advocacy Program. When a founded disposition is made, the child protective services worker shall notify the Family Advocacy Program representative in writing as set forth in 22VAC40-720-20. When a family assessment is conducted and the family is determined to be in need of services, the child protective services worker may notify the Family Advocacy Program representative in writing as set forth in 22VAC40-720-20.

22VAC40-705-150. Services.

A. At the completion of a family assessment or investigation, the local department shall consult with the family to provide or arrange for necessary protective and rehabilitative services to be provided to the child and his family to the extent funding is available pursuant to subdivision A 2 of §63.2-1505 or §63.2-1506 of the Code of Virginia.

B. Families may decline services offered as a result of a family assessment or an investigation. If the family declines services, the case shall be closed unless there is an existing court order or the local department determines that sufficient cause exists due to threat of harm or actual harm to the child to redetermine the case as one that needs to be ~~investigated or~~ brought to the attention of the court. In no instance shall these actions be taken solely because the family declines services.

C. At the completion of a family assessment or investigation, local departments of social services may petition the court for services deemed necessary.

D. Protective services also includes preventive services to children about whom no formal complaint of abuse or neglect has been made, but for whom potential harm or threat of harm exists, to be consistent with §§16.1-251, 16.1-252, 16.1-279.1, 63.2-1503 J, and 63.2-1502 of the Code of Virginia.

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E. Local departments shall support the establishment and functioning of multidisciplinary teams pursuant to §63.2-1503 J of the Code of Virginia.

F. The local department must use reasonable diligence to locate any child for whom a founded disposition of abuse or neglect has been made and/or a child protective services case has been opened pursuant to §63.2-1503 F of the Code of Virginia. The local department shall document its attempts to locate the child and family.

G. When an abused or neglected child and persons who are the subject of an open child abuse services case have relocated out of the jurisdiction of the local department, the local department shall notify the child protective services agency in the jurisdiction to which such persons have relocated, whether inside or outside of the Commonwealth of Virginia, and forward to such agency relevant portions of the case records pursuant to §63.2-1503 G of the Code of Virginia.

H. The receiving local department shall arrange necessary protective and rehabilitative services pursuant to §63.2-1503 G of the Code of Virginia.

22VAC40-705-180. Training.

A. The department shall implement a uniform training plan for child protective services workers and supervisors. The plan shall establish minimum standards for all child protective services workers and supervisors in the Commonwealth of Virginia.

B. Workers shall complete skills and policy training specific to child abuse and neglect investigations and family assessments within the first ~~year~~ two years of their employment.

VA.R. Doc. No. R07-215; Filed July 28, 2008, 7:48 a.m.

GENERAL NOTICES/ERRATA

STATE BOARD OF EDUCATION

Proposed Public Participation Regulations

The Virginia Board of Education is seeking public comment on the proposed Regulations Governing Public Participation, which were reviewed by the board in draft form on July 17, 2008. The proposed regulations are intended to promote public involvement in the development, amendment, or repeal of state regulations. See: http://www.doe.virginia.gov/boe/meetings/2008/07_jul/agenda_items/item_f.pdf.

Please send your comments by September 5, 2008, to: Dr. Margaret N. Roberts, Executive Assistant to the Board of Education, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, or email margaret.roberts@doe.virginia.gov or policy@doe.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Enforcement Action - Dixon Lumber Company, Inc.

An enforcement action has been proposed for Dixon Lumber Company, Inc., for alleged violations at its Austin Meadows site near Austinville, in Wythe County. A proposed consent order cancels and supercedes both a previous order and a previous amendment to that order and contains a schedule for removal of the limestone tailings pile at the site. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Dallas R. Sizemore will accept comments by email at drsizemore@deq.virginia.gov, FAX (276) 676-4899 or postal mail at Department of Environmental Quality, Southwest Regional Office, P.O. Box 1688, 355 Deadmore Street, Abingdon, VA 24212, from August 18, 2008, to September 17, 2008.

Proposed Enforcement Action - Liberty University, Inc.

An enforcement action has been proposed for Liberty University, Inc., for alleged violations in the City of Lynchburg. The Department of Environmental Quality (DEQ) proposes to issue a consent order as a settlement to resolve compliance deficiencies of the Virginia Water Protection Program. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. G. Marvin Booth, III, will accept comments by email at gmbooth@deq.virginia.gov, FAX (434) 582-5125 or postal mail Department of Environmental Quality, South Central Regional Office, 7705 Timberlake Road, Lynchburg, VA 24502, from August 18, 2008, to September 18, 2008.

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 July 30, 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 Thirty-Seven (08)

Virginia's Instant Game Lottery 1063; "Hot \$100's" (effective 7/23/08)

Director's Order Number Thirty-Eight (08)

Virginia's Instant Game Lottery 1064; "Go For The Gold" (effective 7/23/08)

Director's Order Number Thirty-Nine (08)

Virginia's Instant Game Lottery 1057; "5 Times The Money" (effective 7/25/08)

DEPARTMENT OF REHABILITATIVE SERVICES

Notice of Periodic Review

Pursuant to Executive Order 36 (2006), The Virginia Department of Rehabilitative Services is conducting a periodic review and invites public comment on the following regulation:

22VAC 30-30, Provision of Independent Living Rehabilitation Services

The department will consider whether this existing regulation is essential to protecting the health, safety and welfare of the public while administering the Independent Living Rehabilitation Services program to provide independent living services to persons with disabilities. The department welcomes specific comments on the performance and effectiveness of this regulation and also requests suggestions to improve the content and organization of the regulation to make it more understandable and useful to constituents.

The comment period for this review begins on August 18, 2008, and ends at 5 p.m. on September 18, 2008. Comments may be submitted to Vanessa S. Rakestraw, Policy Analyst, Virginia Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia 23229, FAX (804) 662-7696 or email vanessa.rakestraw@drs.virginia.gov.

Regulations may be viewed online at the Virginia Regulatory Town Hall site located at <http://www.townhall.state.va.us>, or copies will be sent upon request.

General Notices/Errata

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

CRIMINAL JUSTICE SERVICES BOARD

Title of Regulation: 6VAC20-250. Regulations Relating to Property and Surety Bail Bondsman (adding 6VAC20-250-10 through 6VAC20-250-380).

Publication: 24:23 VA.R. 3146-3151 July 21, 2008.

Correction to Final Regulation:

Page 3156, 6VAC20-250-220 A 1, strike "indeminator" and add "indemnitor" within brackets

Page 3157, 6VAC20-250-230 C, line 1, strike "arrested or" within brackets

Page 3158, 6VAC20-250-250 K, line 2, strike "indeminator" and add "indemnitor" within brackets

VA.R. Doc. No. R05-279; Filed July 29, 2008, 10:07 a.m.

STATE CORPORATION COMMISSION

Title of Regulation: 20VAC5-414. Bad Check Charges and Late Payment Charges.

Publication: 24:23 VA.R. 3235-3238 July 21, 2008.

Correction to Proposed Regulation:

Page 3235, Public Hearing Information, delete "No public hearings are scheduled" and insert "A public hearing will be scheduled upon request."

VA.R. Doc. No. R08-1391