



# Virginia Register of Regulations

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# THE VIRGINIA REGISTER INFORMATION PAGE

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

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

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

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

The Joint Commission 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**

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. 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 no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. 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.

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# PUBLICATION SCHEDULE AND DEADLINES

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

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## October 2008 through August 2009

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
<b>FINAL INDEX Volume 24</b>		<b>October 2008</b>
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 ( <b>Tuesday</b> )	December 8, 2008
<b>INDEX 1 Volume 25</b>		<b>January 2009</b>
25:8	December 3, 2008	December 22, 2008
25:9	December 16, 2008 ( <b>Tuesday</b> )	January 5, 2009
25:10	December 30, 2008 ( <b>Tuesday</b> )	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
<b>INDEX 2 Volume 25</b>		<b>April 2009</b>
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
<b>INDEX 3 Volume 25</b>		<b>July 2009</b>
25:21	June 3, 2009	June 22, 2009
25:22	June 17, 2009	July 6, 2009
25:23	July 1, 2009	July 20, 2009
25:24	July 15, 2009	August 3, 2009
25:25	July 29, 2009	August 17, 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
<b>Title 1. Administration</b>			
1 VAC 30-45-10 through 1 VAC 30-45-860	Added	24:25 VA.R. 3449-3506	**
1 VAC 30-46-10 through 1 VAC 30-46-210	Added	24:25 VA.R. 3506-3523	**
1 VAC 50-10-60 through 1 VAC 50-10-150	Repealed	25:2 VA.R. 119	10/29/08
1 VAC 50-11-10 through 1 VAC 50-11-110	Added	25:2 VA.R. 119-122	10/29/08
1 VAC 55-10-10 through 1 VAC 55-10-50	Repealed	25:2 VA.R. 122	10/29/08
1 VAC 55-11-10 through 1 VAC 55-11-110	Added	25:2 VA.R. 122-125	10/29/08
1 VAC 75-10-10 through 1 VAC 75-10-40	Repealed	24:25 VA.R. 3523	9/17/08
1 VAC 75-11-10 through 1 VAC 75-11-110	Added	24:25 VA.R. 3523-3526	9/17/08
<b>Title 2. Agriculture</b>			
2 VAC 5-10-10 through 2VAC5-10-70	Repealed	25:3 VA.R. 342	11/12/08
2 VAC 5-11-10 through 2VAC5-11-110	Added	25:3 VA.R. 343-345	11/12/08
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 5-100-10 through 2 VAC 5-100-40	Repealed	24:26 VA.R. 3707	10/18/08
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 5-206-10 through 2 VAC 5-206-50	Added	24:25 VA.R. 3527-3531	10/3/08
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 5-330-30	Amended	25:2 VA.R. 126	10/15/08
2 VAC 5-335-10 through 2 VAC 5-335-130	Added	25:2 VA.R. 126-129	10/15/08
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

\*\* Suspension of Regulatory Process 25:3

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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
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
2 VAC 20-51-10 through 2 VAC 20-51-50	Amended	25:3 VA.R. 346-350	12/1/08
2 VAC 20-51-70	Amended	25:3 VA.R. 350	12/1/08

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
2 VAC 20-51-90	Amended	25:3 VA.R. 351	12/1/08
2 VAC 20-51-100	Amended	25:3 VA.R. 351	12/1/08
2 VAC 20-51-160	Amended	25:3 VA.R. 351	12/1/08
2 VAC 20-51-170	Amended	25:3 VA.R. 352	12/1/08
2 VAC 20-51-200	Amended	25:3 VA.R. 352	12/1/08
2 VAC 20-51-210	Amended	25:3 VA.R. 352	12/1/08
<b>Title 3. Alcoholic Beverages</b>			
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
<b>Title 4. Conservation and Natural Resources</b>			
4 VAC 3-10-10	Repealed	25:2 VA.R. 129	10/29/08
4 VAC 3-10-20	Repealed	25:2 VA.R. 129	10/29/08
4 VAC 3-10-30	Repealed	25:2 VA.R. 129	10/29/08
4 VAC 3-11-10 through 4 VAC 3-11-110	Added	25:2 VA.R. 130-132	10/29/08
4 VAC 5-10-10	Repealed	25:2 VA.R. 132	10/29/08
4 VAC 5-10-20	Repealed	25:2 VA.R. 132	10/29/08
4 VAC 5-10-30	Repealed	25:2 VA.R. 132	10/29/08
4 VAC 5-11-10 through 4 VAC 5-11-110	Added	25:2 VA.R. 133-136	10/29/08
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
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

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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
4 VAC 20-260-35 emer	Amended	25:3 VA.R. 353	10/1/08-10/31/08
4 VAC 20-260-40 emer	Amended	25:3 VA.R. 353	10/1/08-10/31/08
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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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 20-620-20	Amended	25:3 VA.R. 354	10/1/08
4 VAC 20-620-30	Amended	24:10 VA.R. 1281	12/27/07
4 VAC 20-620-30	Amended	25:3 VA.R. 354	10/1/08
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 20-620-40	Amended	25:3 VA.R. 355	10/1/08
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 20-720-20	Amended	25:3 VA.R. 357	10/1/08
4 VAC 20-720-40	Amended	24:12 VA.R. 1457	2/1/08
4 VAC 20-720-40	Amended	25:3 VA.R. 359	10/1/08
4 VAC 20-720-50	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-720-50	Amended	25:3 VA.R. 360	10/1/08
4 VAC 20-720-60	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-720-60	Amended	25:3 VA.R. 360	10/1/08
4 VAC 20-720-70	Amended	25:3 VA.R. 360	10/1/08
4 VAC 20-720-75	Amended	25:3 VA.R. 361	10/1/08
4 VAC 20-720-80	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-720-80	Amended	25:3 VA.R. 361	10/1/08
4 VAC 20-720-95	Amended	25:3 VA.R. 361	10/1/08
4 VAC 20-720-100	Amended	25:3 VA.R. 361	10/1/08
4 VAC 20-720-106 emer	Amended	25:1 VA.R. 24	9/1/08-9/30/08
4 VAC 20-720-106	Amended	25:3 VA.R. 361	10/1/08
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 20-751-10 emer	Amended	25:3 VA.R. 362	9/29/08-10/28/08
4 VAC 20-751-15	Added	24:15 VA.R. 2027	3/1/08
4 VAC 20-751-15 emer	Amended	25:3 VA.R. 362	9/29/08-10/28/08
4 VAC 20-751-20	Amended	24:15 VA.R. 2027	3/1/08
4 VAC 20-751-20 emer	Amended	25:3 VA.R. 362	9/29/08-10/28/08
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 20-910-45	Amended	24:25 VA.R. 3537	8/1/08
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 20-1150-10	Added	24:25 VA.R. 3538	8/1/08
4 VAC 20-1150-20	Added	24:25 VA.R. 3538	8/1/08
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 50-10-10	Repealed	25:2 VA.R. 137	10/29/08
4 VAC 50-10-20	Repealed	25:2 VA.R. 137	10/29/08
4 VAC 50-10-30	Repealed	25:2 VA.R. 137	10/29/08
4 VAC 50-11-10 through 4 VAC 50-11-110	Added	25:2 VA.R. 138-141	10/29/08
4 VAC 50-20-20 through 4 VAC 50-20-90	Amended	24:25 VA.R. 3539-3554	9/26/08
4 VAC 50-20-51	Added	24:25 VA.R. 3544	9/26/08
4 VAC 50-20-52	Added	24:25 VA.R. 3545	9/26/08
4 VAC 50-20-54	Added	24:25 VA.R. 3545	9/26/08
4 VAC 50-20-58	Added	24:25 VA.R. 3546	9/26/08
4 VAC 50-20-59	Added	24:25 VA.R. 3546	9/26/08
4 VAC 50-20-100 through 4 VAC 50-20-140	Repealed	24:25 VA.R. 3554-3558	9/26/08
4 VAC 50-20-105	Added	24:25 VA.R. 3554	9/26/08
4 VAC 50-20-125	Added	24:25 VA.R. 3557	9/26/08
4 VAC 50-20-150 through 4 VAC 50-20-240	Amended	24:25 VA.R. 3558-3563	9/26/08
4 VAC 50-20-155	Added	24:25 VA.R. 3558	9/26/08
4 VAC 50-20-165	Added	24:25 VA.R. 3559	9/26/08
4 VAC 50-20-175	Added	24:25 VA.R. 3560	9/26/08
4 VAC 50-20-177	Added	24:25 VA.R. 3561	9/26/08
4 VAC 50-20-250	Repealed	24:25 VA.R. 3564	9/26/08
4 VAC 50-20-260 through 4 VAC 50-20-320	Amended	24:25 VA.R. 3564-3565	9/26/08
4 VAC 50-20-330 through 4 VAC 50-20-400	Added	24:25 VA.R. 3565-3567	9/26/08
4 VAC 50-60-10	Amended	24:20 VA.R. 2842	7/9/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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
<b>Title 5. Corporations</b>			
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
<b>Title 6. Criminal Justice and Corrections</b>			
6 VAC 15-10-10 through 6 VAC 15-10-100	Repealed	25:3 VA.R. 363	11/15/08
6 VAC 15-11-10 through 6 VAC 15-11-110	Added	25:3 VA.R. 363-366	11/15/08
6 VAC 15-31-320	Amended	24:25 VA.R. 3568	9/18/08
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 15-70-10	Amended	25:3 VA.R. 367	11/15/08
6 VAC 15-70-40 through 6 VAC 15-70-130	Amended	25:3 VA.R. 367-372	11/15/08
6 VAC 15-70-160	Amended	25:3 VA.R. 372	11/15/08
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 20-160-10	Amended	25:2 VA.R. 141	10/29/08
6 VAC 20-160-20	Amended	25:2 VA.R. 142	10/29/08
6 VAC 20-160-30	Amended	25:2 VA.R. 142	10/29/08
6 VAC 20-160-40	Amended	25:2 VA.R. 143	10/29/08
6 VAC 20-160-60	Amended	25:2 VA.R. 144	10/29/08
6 VAC 20-160-70	Amended	25:2 VA.R. 144	10/29/08
6 VAC 20-160-80	Amended	25:2 VA.R. 144	10/29/08
6 VAC 20-160-100	Amended	25:2 VA.R. 145	10/29/08
6 VAC 20-160-120	Amended	25:2 VA.R. 145	10/29/08
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
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 35-10-10 through 6 VAC 35-10-150	Repealed	24:25 VA.R. 3573	9/17/08
6 VAC 35-11-10 through 6 VAC 35-11-110	Added	24:25 VA.R. 3574-3576	9/17/08
6 VAC 35-20-37 emer	Amended	25:3 VA.R. 373	8/1/07-1/31/09
6 VAC 35-51-10 through 6 VAC 35-51-1100	Added	24:25 VA.R. 3577-3610	9/17/08
6 VAC 35-140-46	Added	25:3 VA.R. 376	12/12/08
6 VAC 40-10-10 through 6 VAC 40-10-90	Repealed	25:2 VA.R. 146	10/30/08
6 VAC 40-11-10 through 6 VAC 40-110	Added	25:2 VA.R. 147-149	10/30/08
6 VAC 40-20-30	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-20-120	Amended	24:26 VA.R. 3718	10/16/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
6 VAC 40-20-130	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-20-160	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-50-10 through 6 VAC 40-50-80	Added	24:9 VA.R. 1103-1104	2/6/08
<b>Title 7. Economic Development</b>			
7 VAC 10-20-10 through 7 VAC 10-20-350	Repealed	24:26 VA.R. 3719	9/1/08
7 VAC 10-21-10 through 7 VAC 10-21-610	Added	24:26 VA.R. 3719-3729	9/1/08
<b>Title 8. Education</b>			
8 VAC 20-650-30	Amended	24:21 VA.R. 2936	9/15/08
8 VAC 40-10-10 through 8 VAC 40-10-90	Repealed	25:3 VA.R. 376	1/1/09
8 VAC 40-11-10 through 8 VAC 40-11-110	Added	25:3 VA.R. 377-379	1/1/09
<b>Title 9. Environment</b>			
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 20-80-10	Amended	25:2 VA.R. 150	11/1/08
9 VAC 20-80-60	Amended	25:2 VA.R. 160	11/1/08
9 VAC 20-80-250	Amended	25:2 VA.R. 166	11/1/08
9 VAC 20-80-260	Amended	25:2 VA.R. 176	11/1/08
9 VAC 20-80-270	Amended	25:2 VA.R. 183	11/1/08
9 VAC 20-80-280	Amended	25:2 VA.R. 191	11/1/08
9 VAC 20-80-485	Amended	25:2 VA.R. 193	11/1/08
9 VAC 20-80-500	Amended	25:2 VA.R. 200	11/1/08
9 VAC 20-80-510	Amended	25:2 VA.R. 203	11/1/08
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 25-260-30	Amending	24:26 VA.R. 3747	8/12/08
9 VAC 25-640 Appendices I through IX	Amended	25:2 VA.R. 217-231	11/1/08
9 VAC 25-640-10	Amended	25:2 VA.R. 206	11/1/08
9 VAC 25-640-20	Amended	25:2 VA.R. 209	11/1/08
9 VAC 25-640-30	Amended	25:2 VA.R. 209	11/1/08
9 VAC 25-640-50	Amended	25:2 VA.R. 210	11/1/08
9 VAC 25-640-70 through 9 VAC 25-640-120	Amended	25:2 VA.R. 210-213	11/1/08

\* 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 25-640-130	Repealed	25:2 VA.R. 213	11/1/08
9 VAC 25-640-150 through 9 VAC 25-640-230	Amended	25:2 VA.R. 213-217	11/1/08
9 VAC 25-640-250	Amended	25:2 VA.R. 217	11/1/08
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
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 25-740-10 through 9 VAC 25-740-210	Added	24:26 VA.R. 3748-3773	10/1/08
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
<b>Title 10. Finance and Financial Institutions</b>			
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
10 VAC 5-160-10	Amended	24:26 VA.R. 3775	8/10/08
10 VAC 5-160-70	Added	24:26 VA.R. 3776	8/10/08
10 VAC 5-160-80	Added	24:26 VA.R. 3776	8/10/08
<b>Title 11. Gaming</b>			
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
<b>Title 12. Health</b>			
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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-220-110	Amended	24:11 VA.R. 1353	3/5/08
12 VAC 5-220-110	Amended	25:1 VA.R. 26	10/15/08
12 VAC 5-220-130	Amended	24:11 VA.R. 1354	3/5/08
12 VAC 5-220-160	Amended	25:1 VA.R. 25	10/15/08
12 VAC 5-220-200	Amended	24:11 VA.R. 1354	3/5/08
12 VAC 5-220-200	Amended	25:1 VA.R. 26	10/15/08
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 5-481-10	Amended	25:2 VA.R. 231	11/1/08
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
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 5-481-390	Amended	25:2 VA.R. 256	11/1/08
12 VAC 5-481-400	Amended	25:2 VA.R. 256	11/1/08
12 VAC 5-481-450	Amended	25:2 VA.R. 257	11/1/08
12 VAC 5-481-451	Added	24:25 VA.R. 3612	10/3/08
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 5-481-480	Amended	25:2 VA.R. 260	11/1/08
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

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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
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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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 5-481-2870	Amended	25:2 VA.R. 267	11/1/08
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 5-481-3160	Amended	25:2 VA.R. 267	11/1/08
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	Repealed	24:18 VA.R. 2689	6/12/08
12 VAC 5-481-3680 through 12 VAC 5-481-3780	Added	24:18 VA.R. 2689-2715	6/12/08
12 VAC 5-481-3710	Amended	25:2 VA.R. 267	11/1/08
12 VAC 30-5-10 through 12 VAC 30-5-110	Added	25:3 VA.R. 380-383	11/12/08
12 VAC 30-40-290 emer	Amended	25:1 VA.R. 35	8/27/08-8/26/09
12 VAC 30-50-130 emer	Amended	24:23 VA.R. 3165	7/2/08 - 7/1/09
12 VAC 30-50-140 emer	Amended	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-50-150 emer	Amended	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-50-180 emer	Amended	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-50-228 emer	Added	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-50-491 emer	Added	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-60-180 emer	Added	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-60-185 emer	Added	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-60-500 emer	Added	25:3 VA.R. 384	8/8/07-2/7/09
12 VAC 30-70-70	Amended	25:3 VA.R. 387	11/27/08
12 VAC 30-70-221	Amended	24:21 VA.R. 2959	7/23/08
12 VAC 30-70-261	Amended	25:3 VA.R. 388	11/27/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-70-271	Amended	25:3 VA.R. 388	11/27/08
12 VAC 30-70-311	Amended	24:26 VA.R. 3778	10/15/08
12 VAC 30-70-321	Amended	24:26 VA.R. 3778	10/15/08
12 VAC 30-70-500	Repealed	25:3 VA.R. 389	11/27/08
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 30-80-32 emer	Added	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-80-40 emer	Amended	24:25 VA.R. 3617	8/4/08-8/3/09
12 VAC 30-80-75	Added	24:21 VA.R. 2965	7/23/08
12 VAC 30-80-190 emer	Amended	25:1 VA.R. 41	8/27/08-8/26/09
12 VAC 30-90-41	Amended	24:26 VA.R. 3778	10/15/08
12 VAC 30-90-264	Amended	25:3 VA.R. 390	11/27/08
12 VAC 30-100-10 through 12 VAC 30-100-60	Repealed	25:3 VA.R. 383-384	11/12/08
12 VAC 30-100-170	Amended	24:25 VA.R. 3622	10/2/08
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 30-120-100	Amended	24:26 VA.R. 3781	10/15/08
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 30-120-310 emer	Amended	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-120-370 emer	Amended	25:3 VA.R. 393	9/1/07-3/3/09
12 VAC 30-120-380 emer	Amended	25:3 VA.R. 393	9/1/07-3/3/09
12 VAC 30-120-380 emer	Amended	25:3 VA.R. 393	7/1/07-12/29/08
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 30-135-10	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-20	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-30	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-40	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-70	Amended	24:26 VA.R. 3784	10/16/08
12 VAC 35-11-10 through 12 VAC 35-11-110	Repealed	25:2 VA.R. 271	10/29/08
12 VAC 35-12-10 through 12 VAC 35-12-110	Added	25:2 VA.R. 271-274	10/29/08
12 VAC 35-105-115	Added	24:11 VA.R. 1372	3/5/08

### **Title 13. Housing**

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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 5-51-81	Amended	24:25 VA.R. 3622	10/1/08
13 VAC 5-51-85	Amended	24:14 VA.R. 1921	5/1/08
13 VAC 5-51-91	Amended	24:14 VA.R. 1924	5/1/08
13 VAC 5-51-130 through 13 VAC 5-51-135	Amended	24:14 VA.R. 1925-1928	5/1/08
13 VAC 5-51-143	Added	24:14 VA.R. 1928	5/1/08
13 VAC 5-51-145	Amended	24:14 VA.R. 1932	5/1/08
13 VAC 5-51-150	Amended	24:14 VA.R. 1932	5/1/08
13 VAC 5-51-152	Repealed	24:14 VA.R. 1937	5/1/08
13 VAC 5-51-154	Amended	24:14 VA.R. 1937	5/1/08
13 VAC 5-51-155	Amended	24:14 VA.R. 1939	5/1/08
13 VAC 5-63-10 through 13 VAC 5-63-50	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-70	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-80	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-100 through 13 VAC 5-63-130	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-150	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-160	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-190 through 13 VAC 5-63-260	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-225	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-265	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-267	Added	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-270	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-280	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-300 through 13 VAC 5-63-360	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-335	Added	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-400	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-430	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-432	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-434 through 13 VAC 5-63-450	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-470 through 13 VAC 5-63-500	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-520	Amended	24:14 VA.R. 1941	5/1/08
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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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 5-200-10	Amended	24:26 VA.R. 3784	10/1/08
13 VAC 5-200-40 through 13 VAC 5-200-80	Amended	24:26 VA.R. 3784-3785	10/1/08
13 VAC 5-200-100	Amended	24:26 VA.R. 3785	10/1/08
13 VAC 6-10-10 through 13 VAC 6-10-120	Repealed	25:3 VA.R. 394	11/13/08
13 VAC 6-11-10 through 13 VAC 6-11-110	Added	25:3 VA.R. 394-397	11/13/08
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
<b>Title 14. Insurance</b>			
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
14 VAC 5-270-146	Added	24:12 VA.R. 1468	1/1/10
14 VAC 5-270-148	Added	24:12 VA.R. 1469	1/1/10
14 VAC 5-270-170	Amended	24:12 VA.R. 1470	1/1/10
14 VAC 5-270-174	Added	24:12 VA.R. 1470	1/1/10
14 VAC 5-270-180	Amended	24:12 VA.R. 1470	1/1/10
14 VAC 5-395-40	Amended	24:26 VA.R. 3811	8/29/08
<b>Title 15. Judicial</b>			
15 VAC 5-80-50	Amended	24:23 VA.R. 3211	7/1/08
<b>Title 16. Labor and Employment</b>			
16 VAC 15-21-30	Amended	24:23 VA.R. 3213	8/21/08
16 VAC 15-30-40	Amended	24:25 VA.R. 3632	9/18/08
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 25-10-10 through 16 VAC 25-10-120	Repealed	24:26 VA.R. 3811	10/1/08
16 VAC 25-11-10 through 16 VAC 25-11-110	Added	24:26 VA.R. 3811-3814	10/1/08
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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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
<b>Title 18. Professional and Occupational Licensing</b>			
18 VAC 10-20-10	Amended	25:3 VA.R. 397	12/1/08
18 VAC 10-20-120	Amended	25:3 VA.R. 399	12/1/08
18 VAC 10-20-280	Amended	25:3 VA.R. 399	12/1/08
18 VAC 10-20-295	Amended	25:3 VA.R. 400	12/1/08
18 VAC 10-20-310	Amended	25:3 VA.R. 400	12/1/08
18 VAC 10-20-340	Amended	25:3 VA.R. 401	12/1/08
18 VAC 10-20-350	Amended	25:3 VA.R. 401	12/1/08
18 VAC 10-20-360	Amended	25:3 VA.R. 401	12/1/08
18 VAC 10-20-380	Amended	25:3 VA.R. 402	12/1/08
18 VAC 10-20-382	Added	25:3 VA.R. 403	12/1/08
18 VAC 10-20-392	Added	25:3 VA.R. 404	12/1/08
18 VAC 10-20-395	Added	25:3 VA.R. 404	12/1/08
18 VAC 10-20-760	Amended	25:3 VA.R. 404	12/1/08
18 VAC 15-10-10 through 18 VAC 15-10-90	Repealed	25:1 VA.R. 55	10/15/08
18 VAC 15-11-10 through 18 VAC 15-11-110	Added	25:1 VA.R. 55-58	10/15/08
18 VAC 15-20-451	Amended	24:17 VA.R. 2455	8/1/08
18 VAC 30-20 (Forms)	Amended	24:26 VA.R. 3814	--
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 45-10-10 through 18 VAC 45- 10-90	Repealed	24:26 VA.R. 3815	10/2/08
18 VAC 45-11-10 through 18 VAC 45-11-110	Added	24:26 VA.R. 3815-3818	10/2/08
18 VAC 48-10-10 through 18 VAC 48-10-110	Added	25:3 VA.R. 411-414	11/13/08
18 VAC 50-22-40	Amended	25:3 VA.R. 415	12/1/08
18 VAC 50-22-50	Amended	25:3 VA.R. 415	12/1/08
18 VAC 50-22-60	Amended	25:3 VA.R. 416	12/1/08
18 VAC 50-22-300 through 18 VAC 50-22-350	Added	25:3 VA.R. 417-418	12/1/08
18 VAC 60-10-10 through 18 VAC 60-10-120	Repealed	25:3 VA.R. 418	11/12/08
18 VAC 60-11-10 through 18 VAC 60-11-110	Added	25:3 VA.R. 419-422	11/12/08
18 VAC 60-20 (Forms)	Amended	25:1 VA.R. 58	--
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 65-10-10 through 18 VAC 65-10-120	Repealed	25:2 VA.R. 291	10/29/08
18 VAC 65-11-10 through 18 VAC 65-11-110	Added	25:2 VA.R. 291-294	10/29/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 65-20 (Forms)	Amended	24:26 VA.R. 3818	--
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
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 65-40 (Forms)	Amended	24:26 VA.R. 3818	--
18 VAC 75-10-10 through 18 VAC 75-10-120	Repealed	25:2 VA.R. 294	10/29/08
18 VAC 75-11-10 through 18 VAC 75-11-110	Added	25:2 VA.R. 295-297	10/29/08
18 VAC 75-20 (Forms)	Amended	24:25 VA.R. 3632	--
18 VAC 76-20 (Forms)	Amended	24:26 VA.R. 3819	--
18 VAC 76-30-10 through 18 VAC 76-30-120	Repealed	24:25 VA.R. 3632	9/17/08
18 VAC 76-31-10 through 18 VAC 76-31-110	Added	24:25 VA.R. 3633-3635	9/17/08
18 VAC 76-40 (Forms)	Amended	24:26 VA.R. 3820	--
18 VAC 85-10-10 through 18 VAC 85-10-110	Repealed	24:26 VA.R. 3820	10/1/08
18 VAC 85-11-10 through 18 VAC 85-11-110	Added	24:26 VA.R. 3820	10/1/08
18 VAC 85-20 (Forms)	Amended	24:26 VA.R. 3823	--
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 (Forms)	Amended	24:26 VA.R. 3823	--
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 (Forms)	Amended	24:26 VA.R. 3823	--
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 (Forms)	Amended	24:26 VA.R. 3823	--
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 (Forms)	Amended	24:26 VA.R. 3823	--
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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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 (Forms)	Amended	24:26 VA.R. 3823	--
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 (Forms)	Amended	24:26 VA.R. 3823	--
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 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-130-30	Amended	24:14 VA.R. 1952	4/16/08
18 VAC 90-10-10 through 18 VAC 90-10-120	Repealed	24:25 VA.R. 3635	9/17/08
18 VAC 90-11-10 through 18 VAC 90-11-110	Added	24:25 VA.R. 3636-3639	9/17/08
18 VAC 90-20 (Forms)	Amended	25:1 VA.R. 59	--
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
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 90-25 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-30 (Forms)	Amended	25:1 VA.R. 59	--
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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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 90-40 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-50 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-60 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-60-110	Amended	24:23 VA.R. 3216	9/4/08
18 VAC 95-20 (Forms)	Amended	24:26 VA.R. 3827	--
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 (Forms)	Amended	24:26 VA.R. 3827	--
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 105-10-10 through 18 VAC 105-10-120	Repealed	24:26 VA.R. 3828	10/1/08
18 VAC 105-11-10 through 18 VAC 105-11-110	Added	24:26 VA.R. 3828-3831	10/1/08
18 VAC 105-20 (Forms)	Amended	24:25 VA.R. 3639	--
18 VAC 105-20-75	Amended	24:22 VA.R. 3071	8/6/08
18 VAC 110-10-10 through 18 VAC 110-10-120	Repealed	25:2 VA.R. 298	10/29/08
18 VAC 110-11-10 through 18 VAC 110-11-110	Added	25:2 VA.R. 298-301	10/29/08
18 VAC 110-20 (Forms)	Amended	24:25 VA.R. 3640	--
18 VAC 110-20-10	Amended	24:8 VA.R. 983	1/23/08
18 VAC 110-20-20 emer	Amended	25:3 VA.R. 464	9/23/08-9/22/09
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 (Forms)	Amended	24:25 VA.R. 3640	--
18 VAC 110-30-15	Amended	24:10 VA.R. 1290	2/20/08
18 VAC 110-50 (Forms)	Amended	24:25 VA.R. 3640	--
18 VAC 110-50-10	Amended	24:10 VA.R. 1290	2/20/08
18 VAC 110-50-20 emer	Amended	25:3 VA.R. 466	9/23/08-9/22/09
18 VAC 110-50-160	Added	24:10 VA.R. 1291	2/20/08
18 VAC 110-50-170	Added	24:10 VA.R. 1291	2/20/08
18 VAC 110-50-180	Added	24:10 VA.R. 1292	2/20/08
18 VAC 110-50-190	Added	24:10 VA.R. 1292	2/20/08
18 VAC 112-10-10 through 18 VAC 112-10-120	Repealed	25:1 VA.R. 61	10/15/08
18 VAC 112-11-10 through 18 VAC 112-11-110	Added	25:1 VA.R. 62-64	10/15/08
18 VAC 112-20 (Forms)	Amended	24:26 VA.R. 3831	--
18 VAC 112-20-81 emer	Added	25:3 VA.R. 467	11/1/07-4/29/09
18 VAC 112-20-90 emer	Amended	25:3 VA.R. 467	11/1/07-4/29/09
18 VAC 112-20-130 emer	Amended	25:3 VA.R. 467	11/1/07-4/29/09
18 VAC 112-20-131 emer	Amended	25:3 VA.R. 467	11/1/07-4/29/09
18 VAC 112-20-150 emer	Amended	25:3 VA.R. 467	11/1/07-4/29/09
18 VAC 115-10-10 through 18 VAC 115-10-120	Repealed	24:26 VA.R. 3832	10/1/08
18 VAC 115-11-10 through 18 VAC 115-11-110	Added	24:26 VA.R. 3832-3835	10/1/08
18 VAC 115-20 (Forms)	Amended	25:1 VA.R. 65	--
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

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-30-150	Amended	24:14 VA.R. 1953	4/16/08
18 VAC 115-30-160	Amended	24:14 VA.R. 1953	4/16/08
18 VAC 115-40 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-50 (Forms)	Amended	25:1 VA.R. 65	--
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 (Forms)	Amended	25:1 VA.R. 65	--
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 120-10-100 through 18 VAC 120-10-180	Repealed	24:26 VA.R. 3835	10/2/08
18 VAC 120-11-10 through 18 VAC 120-11-110	Added	24:26 VA.R. 3836-3838	10/2/08
18 VAC 125-20 (Forms)	Amended	25:1 VA.R. 66	--
18 VAC 125-20-170	Amended	24:12 VA.R. 1471	3/19/08
18 VAC 125-30 (Forms)	Amended	25:1 VA.R. 66	--
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 140-10-10 through 18 VAC 140-10-120	Repealed	24:25 VA.R. 3641	9/17/08
18 VAC 140-11-10 through 18 VAC 140-11-110	Added	24:25 VA.R. 3641-3644	9/17/08
18 VAC 140-20 (Forms)	Amended	25:1 VA.R. 67	--

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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 150-10-10 through 18 VAC 150-10-120	Repealed	25:1 VA.R. 68	10/15/08
18 VAC 150-11-10 through 18 VAC 150-11-110	Added	25:1 VA.R. 68-71	10/15/08
18 VAC 150-20 (Forms)	Amended	24:26 VA.R. 3838	--
18 VAC 150-20-135	Amended	24:21 VA.R. 2969	7/23/08
<b>Title 19. Public Safety</b>			
19 VAC 30-10-10 through 19 VAC 30-10-40	Repealed	24:26 VA.R. 3839	10/1/08
19 VAC 30-11-10 through 19 VAC 30-11-110	Added	24:26 VA.R. 3839-3842	10/1/08
19 VAC 30-20-115	Added	24:11 VA.R. 1421	3/6/08
19 VAC 30-70-6	Amended	24:8 VA.R. 988	3/1/08
19 VAC 30-70-7	Amended	24:8 VA.R. 988	3/1/08
19 VAC 30-70-9	Amended	24:8 VA.R. 989	3/1/08
19 VAC 30-70-10	Amended	24:8 VA.R. 991	3/1/08
19 VAC 30-70-40	Amended	24:8 VA.R. 994	3/1/08
19 VAC 30-70-50	Amended	24:8 VA.R. 995	3/1/08
19 VAC 30-70-60	Amended	24:8 VA.R. 997	3/1/08
19 VAC 30-70-80	Amended	24:8 VA.R. 998	3/1/08
19 VAC 30-70-90	Amended	24:8 VA.R. 1001	3/1/08
19 VAC 30-70-110 through 19 VAC 30-70-660	Amended	24:8 VA.R. 1001-1070	3/1/08
19 VAC 30-190-10 through 19 VAC 30-190-140	Added	24:11 VA.R. 1421-1423	3/6/08
<b>Title 20. Public Utilities and Telecommunications</b>			
20 VAC 5-315-10	Amended	24:26 VA.R. 3845	8/25/08
20 VAC 5-315-20	Amended	24:26 VA.R. 3845	8/25/08
20 VAC 5-315-40	Amended	24:26 VA.R. 3846	8/25/08
20 VAC 5-315-50	Amended	24:26 VA.R. 3847	8/25/08
<b>Title 21. Securities and Retail Franchising</b>			
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
<b>Title 22. Social Services</b>			
22 VAC 5-30-10 through 22 VAC 5-30-60	Added	24:25 VA.R. 3665-3669	1/1/09
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 30-10-10	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-20	Amended	24:22 VA.R. 3077	8/8/08
22 VAC 30-10-20	Repealed	25:1 VA.R. 71	10/15/08

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 30-10-40	Amended	24:22 VA.R. 3077	8/8/08
22 VAC 30-10-40	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-50	Amended	24:22 VA.R. 3077	8/8/08
22 VAC 30-10-50	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-60	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-11-10 through 22 VAC 30-11-110	Added	25:1 VA.R. 72-74	10/15/08
22 VAC 40-11-10 through 22 VAC 40-11-70	Repealed	25:1 VA.R. 74	1/1/09
22 VAC 40-12-10 through 22 VAC 40-12-110	Added	25:1 VA.R. 74-78	1/1/09
22 VAC 40-151-10 through 22 VAC 40-151-1020	Added	25:3 VA.R. 482-512	1/1/09
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
<b>Title 23. Taxation</b>			
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 10-20-155	Added	24:26 VA.R. 3848	10/1/08
23 VAC 10-210-20	Repealed	24:26 VA.R. 3849	10/1/08
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
<b>Title 24. Transportation and Motor Vehicles</b>			
24 VAC 25-10-10	Repealed	25:3 VA.R. 519	10/13/08
24 VAC 25-20-10	Repealed	25:3 VA.R. 519	10/13/08
24 VAC 27-30-10 through 24 VAC 27-30-190	Added	25:1 VA.R. 78-89	10/15/08
24 VAC 30-16-10	Repealed	25:3 VA.R. 520	11/12/08
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

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 3. ALCOHOLIC BEVERAGES

### ALCOHOLIC BEVERAGE CONTROL BOARD

#### Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Alcoholic Beverage Control Board has WITHDRAWN the Notice of Intended Regulatory Action for **3VAC5-50, Retail Operations**, which was published in 24:11 VA.R. 1341 February 4, 2008. The changes contemplated in the action were also included in another action for which the proposed stage has already been published in the Virginia Register of Regulations.

Agency Contact: Jeffrey L. Painter, Legislative and Regulatory Coordinator, Department of Alcoholic Beverage Control, P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4621, FAX (804) 213-4411, TTY (804) 213-4687, or email [jeffrey.painter@abc.virginia.gov](mailto:jeffrey.painter@abc.virginia.gov).

VA.R. Doc. No. R08-924; Filed October 2, 2008, 3:40 a.m.

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## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### CRIMINAL JUSTICE SERVICES BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Criminal Justice Services Board intends to consider amending the following regulations: **6VAC20-171, Regulations Relating to Private Security Services**. The purpose of the proposed action is a comprehensive review and amendment of existing regulations. This review and recommended amendments are based on legislative actions that require development of regulations for locksmiths as well as further development of regulations relating to detective canine handlers. In addition to recent legislative actions, a comprehensive review will amend and revise the rules mandating and prescribing standards, requirements and procedures that serve to protect the citizens of the Commonwealth from unqualified, unscrupulous and incompetent persons engaging in the activities of private security services.

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

Statutory Authority: § 9.1-141 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on November 26, 2008.

Agency Contact: Lisa McGee, Section Chief, Department of Criminal Justice Services, P.O. Box 1300, Richmond, VA 23218, telephone (804) 371-2419, FAX (804) 786-6344, or email [lisa.mcgee@dcjs.virginia.gov](mailto:lisa.mcgee@dcjs.virginia.gov).

VA.R. Doc. No. R09-1546; Filed September 29, 2008, 8:36 a.m.

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## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider promulgating the following regulations: **12VAC5-67, Advance Health Care Directive Registry**. The purpose of the proposed action is to implement a central online registry for advance health care directives.

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

Statutory Authority: § 54.1-2994 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on November 26, 2008.

Agency Contact: Kimberly S. Barnes, Policy Analyst, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7661, or email [kim.barnes@vdh.virginia.gov](mailto:kim.barnes@vdh.virginia.gov).

VA.R. Doc. No. R09-1382; Filed October 8, 2008, 11:10 a.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF PHARMACY

#### Amended Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Pharmacy intends to consider amending the following regulations: **18VAC110-20, Regulations Governing the Practice of Pharmacy**, and **18VAC110-50, Regulations Governing Wholesale Distributors, Manufacturers and Warehousemen**. The purpose of the proposed action is to set the renewal dates in the regulations as prescribed in Chapter 330 of the 2008 Acts of Assembly. When this notice was initially published in 25:3 VA.R. 339 October 13, 2008, the intent to also amend 18VAC110-50, Regulations Governing Wholesale Distributors, Manufacturers and Warehousemen, was unintentionally omitted from the notice. The agency is extending the public comment period to provide the public 30 days' notice from this notice for submitting comments to the agency.

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

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# Notices of Intended Regulatory Action

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

Public comments: Public comments may be submitted until 5 p.m. on November 26, 2008.

Agency Contact: Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email [scotti.russell@dhp.virginia.gov](mailto:scotti.russell@dhp.virginia.gov).

VA.R. Doc. No. R09-1311

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## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending the following regulations: **22VAC40-601, Food Stamp Program.** The purpose of the proposed action is to alter the length of time an application for food stamp benefits may be held pending before processing. Federal regulations allow states an option to deny applications after 30 days if the local department of social services is unable to process the application or to hold the application pending for an additional 30-day period. The State Board of Social Services would like to deny applications after 30 days instead of holding the application pending for an additional 30-day period before disposing of the applications.

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

Statutory Authority: § 63.2-217 of the Code of Virginia; 7 CFR 271.4.

Public Comments: Public comments may be submitted until 5 p.m. on November 26, 2008.

Agency Contact: Celeste Jackson, Program Consultant, Department of Social Services, Office of Legislative and Regulatory Affairs, 7 North Eighth Street, Room 5214, Richmond, VA 23219, telephone (804) 726-7376, FAX (804) 726-7356, TTY (800) 828-1120, or email [celeste.jackson@dss.virginia.gov](mailto:celeste.jackson@dss.virginia.gov).

VA.R. Doc. No. R09-1593; Filed October 8, 2008, 10:32 a.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending the following regulations: **22VAC40-25, Auxiliary Grants Program.** The purpose of the proposed action is to (i) clarify and simplify requirements for assisted living facilities to document proper handling of Auxiliary Grant funds and Auxiliary Grant recipients'

personal needs allowances; (ii) establish a residency requirement for Auxiliary Grant applicants; and (iii) ensure that the regulations conform to current Virginia Department of Social Services licensing and assessment regulations.

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

Statutory Authority: §§ 63.2-217 and 63.2-800 of the Code of Virginia; § 416-2001 of Title XX of the Social Security Act.

Public Comments: Public comments may be submitted until 5 p.m. on November 26, 2008.

Agency Contact: Paige McCleary, Adult Services Program Consultant, Department of Social Services, 7 North Eighth Street, Room 5214, Richmond, VA 23219, telephone (804) 726-7536, FAX (804) 726-7895, TTY (800) 828-1120, or email [paige.mccleary@dss.virginia.gov](mailto:paige.mccleary@dss.virginia.gov).

VA.R. Doc. No. R09-1327; Filed October 8, 2008, 10:31 a.m.

## DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department for the Blind and Vision Impaired intends to consider repealing **22VAC45-50, Regulation Governing Provisions of Services in Vocational Rehabilitation** and promulgating the following regulations: **22VAC45-51, Regulations Governing Provisions of Services in Vocational Rehabilitation.** The purpose of the proposed action is to repeal existing regulations (22VAC45-50) concurrently with the promulgation of new regulations (22VAC45-51). The current regulations, last revised in 1990, are outdated. 22VAC45-51 incorporates updated federal language, updates the names of two agencies, and combines two sections.

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

Statutory Authority: §§ 51.5-65 and 51.5-66 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on November 26, 2008.

Agency Contact: Susan D. Payne, Program Director, Vocational Rehabilitation, Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3184, FAX (804) 371-3351, TTY (804) 371-3140, or email [susan.payne@dbvi.virginia.gov](mailto:susan.payne@dbvi.virginia.gov).

VA.R. Doc. No. R09-1168; Filed September 28, 2008, 9:12 a.m.

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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 2. AGRICULTURE

### STATE BOARD OF AGRICULTURE AND CONSUMER SERVICES

#### Proposed Regulation

**Title of Regulation:** 2VAC5-200. Rules and Regulations Pertaining to the Disposal of Entire Flocks of Dead Poultry (amending 2VAC5-200-10, 2VAC5-200-20, 2VAC5-200-30, 2VAC5-200-50, 2VAC5-200-60).

**Statutory Authority:** § 3.2-6002 of the Code of Virginia.

**Public Hearing Information:**

December 4, 2008 - 10 a.m. - Oliver Hill Building, Virginia Department of Agriculture and Consumer Services, 102 Governor Street, Room 220, Richmond, VA

**Public Comments:** Public comments may be submitted until December 26, 2008.

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

**Basis:** The Board of Agriculture and Consumer Services is authorized to adopt regulations under § 3.2-6002 of the Code of Virginia. This section encourages the board to conform its regulations involving the prevention and eradication of contagious or infectious diseases to livestock and poultry with federal regulations establishing regional or national plans of control and eradication. This regulation is in keeping with the state's duty to control and eradicate infectious or contagious disease as part of that state/federal cooperative effort. This regulation as it now exists and as it will be amended leaves extensive discretion with the State Veterinarian as to which method will be used to dispose of large numbers of poultry carcasses when an outbreak of an infectious or contagious disease, such as Avian Influenza or Exotic Newcastle Disease, occurs. Disposal of whole flocks will be accomplished by the use of quarantine orders issued by the State Veterinarian under § 3.2-6003 of the Code of Virginia. Although this latter authority exists, the proposed regulation further identifies the acceptable methods that can be used for disposal.

**Purpose:** This regulatory action is essential to protect the health of Virginia's citizens by preventing the spread of

infectious or contagious diseases. Some of the diseases of concern (i.e., H5, H7 high pathogenicity avian influenza) are zoonotic diseases (i.e., can be spread from poultry to humans). Delayed identification of an effective, safe, and environmentally sound means of disposing of the poultry carcasses would cause a delay in the depopulation of infected flocks, thereby potentially causing an increase in the number of flocks becoming infected. In case of a high pathogenicity avian influenza outbreak, the risk of humans becoming infected with the disease would increase. This on-farm composting can help protect the public by reducing the possible exposure to the disease of concern that could occur if carcasses are moved from the premises.

**Substance:** The substantive provisions of the proposed regulation include the following:

A definition of "composting" is added to define that specific biological process.

The definition of "dead poultry" is amended to update the definition and to incorporate poultry destroyed as a result of natural disasters.

The definition of "department" is removed as being unnecessary.

The definition of "disposal" is amended to include composting or other methods approved by the State Veterinarian to allow for greater flexibility.

The definition of "disposal pit" is amended to update and reference appropriate Department of Environmental Quality regulations.

The definition of "flock" is amended to provide discretion for determining a separate flock by the State Veterinarian instead of the department.

The definition of "incinerator" is amended to mirror a similar definition contained in the Code of Virginia.

The definition of "infectious and contagious disease" is removed as being unnecessary.

The definition of "landfill" is amended to mirror a similar definition contained in the Code of Virginia.

The definition of "person" is amended to remove the terminology "for profit." Additionally, other "for profit" references are removed throughout the proposed regulation to show that the regulation applies to whole flock disposal, whether for profit or not for profit.

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2VAC5-200-20 is amended to better emphasize that the proposed regulation only applies to situations where the entire flock must be disposed of.

2VAC5-200-30 is amended to incorporate composting as an acceptable method of disposal.

2VAC5-200-50 is amended to eliminate the requirement of filing a disposal plan with the State Veterinarian, to require that the person must have a plan in their possession that can be made readily available to the State Veterinarian or his representative, and to identify that persons owning flocks of less than 500 poultry are not required to have a disposal plan, but will work in consultation with the State Veterinarian to determine a proper method of disposal.

The forms section is removed as the forms identified in the existing regulation are obsolete.

Issues: Poultry diseases of regulatory concern like Avian Influenza and Exotic Newcastle Disease can have serious financial and economical impacts on the affected individuals and communities. Poultry growers and their employees, poultry farm service providers, litter brokers, processing facility employees, and transportation providers can be adversely impacted during a contagious disease outbreak. During the 2002-2003 low pathogenicity avian influenza outbreak in the Shenandoah Valley of Virginia, delayed identification of an effective, safe, and environmentally sound means of disposing of the poultry carcasses caused an interruption in the depopulation of infected flocks.

Adding composting as an acceptable method of whole poultry flock carcass disposal provides poultry growers, and the industry as a whole, an additional economical and environmentally sound method of carcass disposal, in addition to other methods already permitted by the regulation.

The primary advantages to the public include benefits to Virginia families whose income would be severely and adversely affected if there were an outbreak of avian influenza. Allowing composting provides an economical and environmentally sound option to poultry producers to quickly and effectively dispose of large numbers of poultry carcasses, minimizing the negative economic impact that will be experienced by these producers. Also, suppliers and family businesses dependent on the poultry industry would also have diminished income during the control and eradication period following the outbreak of the disease; consequently, if poultry carcasses can be disposed of quickly and effectively, the length of time that these other businesses will be affected can be shortened minimizing the negative financial impact on these businesses.

Primary advantages to the agency and the Commonwealth are that this proposed regulation would facilitate the state's duty to control and eradicate infectious or contagious disease in poultry by allowing as many viable options of carcass disposal as possible.

Composting is an environmentally sound method of carcass disposal that allows for disposing of large biomasses of dead poultry on the same premises where the birds were grown. This on-farm composting can protect other poultry and possibly the public by reducing the possible exposure to the disease of concern (i.e. H5, H7 avian influenza) that could occur if carcasses are moved from the premises. This is one of the methods of carcass disposal preferred by the Virginia Poultry Disease Task Force that is composed of representatives from the commercial poultry industry, the Virginia Department of Agriculture and Consumer Services, the Virginia Department of Environmental Quality, and the United States Department of Agriculture.

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

Summary of the Proposed Regulation. The Virginia Department of Agriculture and Consumer Services (VDACS) proposed to amend the existing Rules and Regulations Pertaining to the Disposal of Entire Flocks of Dead Poultry by (1) adding "composting" as a method of whole poultry flock carcass disposal; (2) removing the terminology "for profit" from the definition of "person" as well as other locations of the regulations; (3) amending the definition of "dead poultry" to incorporate poultry destroyed as a result of natural disasters; and (4) no longer requiring that disposal plans be filed with the State Veterinarian.

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

Estimated Economic Impact. The current regulation permits poultry infected with infectious or contagious disease to be destroyed by incineration (on or off the farm premises where the birds were raised), rendering, burying in a landfill, or burying on premises in a disposal pit. The proposed regulation will add "composting" as an approved method of disposal. Composting of poultry carcasses is a decomposition process that involves mixing carcasses, a carbon source, and water that, following the decomposition process, will create a homogenous organic material suitable for use as a soil conditioner, fertilizer or material for land application.

Composting is an environmentally sound method of carcass disposal which allows for disposing of large biomasses of dead poultry on the same premises where the birds were grown. This on-farm composting can protect other poultry and possibly the public by reducing the possible exposure to the disease of concern that could occur if carcasses are moved from the premises. It is one of the methods of carcass disposal preferred by the Virginia Poultry Disease Task Force.<sup>1</sup> The use of composting for disposal of whole poultry flock mortality will expedite responses to disease events and help control the consequences of a disease spreading in a locality. Rapid response relative to disposal of whole flocks of poultry will likely minimize any negative effect that would be experienced by poultry producers. Also, if poultry carcasses

can be disposed of quickly and effectively, the length of time that suppliers and family businesses dependent on the poultry industry will be affected can be shortened, minimizing the negative financial impact on these businesses.

VDACS also proposes to amend the definition of "dead poultry" to incorporate poultry destroyed as a result of natural disasters and makes it clear that on farm composting is a disposal option for whole flock mortality that results from nondisease causes. According to VDACS, currently the options are similar for disposal of whole flock mortality that results from either infectious disease or natural disasters, with the actual disposal method chosen based on a combination of considerations including public safety, worker safety, environmental considerations, and efficiency. Therefore this proposed change will likely not have any significant effect.

The proposed regulation will amend the requirement pertaining to disposal plans for an entire flock of dead poultry. Disposal plans will be no longer required to be filed with the State Veterinarian before any person could engage in the raising or keeping of poultry<sup>2</sup> or enter into a contract involving the raising or keeping of poultry with any other person. Instead, the proposed regulation requires that a disposal plan be developed and be made available to the State Veterinarian or his representative upon request. This proposed change will likely save the processing time for the regulated operations and allow them to conduct business in a more efficient way. Neither the current regulation nor the proposed regulation requires disposal plans for persons owning flocks of less than 500 poultry. The proposed regulation adds a statement that the State Veterinarian, in consultation with the owner, will determine a method of disposal during a mortality event of a flock of less than 500 poultry. The added language will provide clarifications to the existing regulation without causing any significant costs to the small poultry growers.

VDACS also proposes to remove the words "for profit" from the definition of "person" and throughout the regulation to reflect that the regulation applies to both for-profit operations and not-for-profit entities. VDACS states that this proposed change will not cause any significant impact except for the requirement of plan development. The proposed regulation requires that all poultry growers with a flock of more than 500 poultry shall have a disposal plan developed and make it available to the State Veterinarian or his representative on request. Poultry owners with a flock of less than 500 poultry are not required to develop such a plan. According to VDACS, the Virginia Department of Environmental Quality and the Virginia Cooperative Extension Service (VCE) have released a publication entitled "Guidelines for In-House Composting"; the Virginia Poultry Disease Task Force has developed a document entitled "Avian Influenza, Surveillance and Rapid Response Plans." These documents are available to the public and may be used to develop a whole flock mortality disposal plan. VDACS will work with VCE Poultry

Specialists to develop generic disposal plans that local extension agents can use to help producers develop a whole flock mortality plan. VDACS believes that this proposed change will cause only a minimal investment in time for the relevant poultry growers.

**Businesses and Entities Affected.** VDACS reports that there are approximately 7 large poultry companies and 1200 growers doing businesses in Virginia, all of which have more than 500 poultry on their premises. There are a large number of owners with less than 500 poultry, but the number is unknown.

**Localities Particularly Affected.** The proposed amendment will affect all localities with poultry growers. Particularly, localities that have the greatest densities of poultry growers would be impacted to a much greater extent than other localities. These localities would include counties located in the Shenandoah Valley, South Central Virginia, Southeast Virginia, and the Eastern Shore.

**Projected Impact on Employment.** Adding composting as a method of disposal of whole poultry flock mortality will likely expedite responses to disease events and reduce any negative effect for poultry producers, suppliers and other businesses dependent on the poultry industry. This will likely reduce the drop in employment in the event of diseases or natural disasters.

**Effects on the Use and Value of Private Property.** Allowing the use of composting for disposal of whole poultry flock mortality will likely reduce the spread of high mortality infectious disease and benefit other poultry growers. Adding composting as an option for the disposal of whole flock mortality will also likely expedite responses to disease events and will likely minimize any negative effect that would be experienced by poultry growers, suppliers and other businesses dependent on the poultry industry. Therefore, the proposed change will likely have a positive impact on the value of these properties.

**Small Businesses: Costs and Other Effects.** Allowing the use of composting for disposal of whole flock mortality will likely reduce the spread of high mortality infectious disease and expedite responses to disease events, which will likely minimize any negative effect that would be experienced by small poultry producers, suppliers and other small businesses dependent on the poultry industry. Small for-profit growers with more than 500 poultry will benefit from the proposed change relating to the disposal plan. Small not-for-profit growers with a flock of more than 500 poultry will be required to have a disposal plan developed. VDACS believes that this requirement will cause only a minimal investment in time for the poultry growers, because documents are available to the public from the Virginia Department of Environmental Quality, Virginia Cooperative Extension Service, and the Virginia Poultry Disease Task Force, at no charge, that will facilitate the development of whole flock mortality disposal

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plans. VDACS estimates that approximately 25% of the 1200 poultry growers are small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed regulation will likely benefit all poultry owners by reducing the possible exposure to the high mortality, infectious diseases. Small for-profit growers with more than 500 poultry will benefit from the proposed change relating to the disposal plan. Small not-for-profit growers that own flocks of more than 500 poultry may incur a minimal cost in developing a disposal plan from a model. There is no alternative method that could achieve the same purpose with a lower adverse effect.

**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.

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

Summary:

*The proposed regulation amends the acceptable methods of carcass disposal to permit composting or other methods approved by the State Veterinarian; adds language on provisions governing composting; and amends the requirement to file disposal plans. The substantive changes proposed by this action include adding "composting" as a method of disposing of poultry destroyed to prevent the*

*spread of an infectious or contagious disease; amending the definitions of "incinerator" and "landfill" to mirror definitions in the Code of Virginia; removing the definition of "infectious and contagious disease"; amending the definition of "person" to remove the terminology "for profit" (as well as removing this terminology from other locations within the proposed regulation) to reflect that the regulation applies not only to for-profit operations, but also to those that are not-for-profit.*

**2VAC5-200-10. Definitions.**

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

"Composting" means the natural process in which beneficial microbes reduce dead poultry into a biologically safe byproduct.

"Dead poultry" means poultry, exclusive of those intentionally slaughtered for food, which ~~that~~ die or are destroyed as a result of a contagious and infectious disease ~~upon any premises in the state~~ through natural contagion on any premises in this state and poultry destroyed as the result of a natural or manmade disaster.

~~"Department" means the Virginia Department of Agriculture and Consumer Services.~~

"Disposal" means ~~the complete~~ to put dead poultry into a landfill or disposal pit; the complete destruction of dead poultry in an incinerator ~~or their proper disposition in a disposal pit, in a landfill,~~ or by rendering or composting; or the management of dead poultry by other methods approved by the State Veterinarian.

~~"Disposal pit" means an opening dug in the ground that meets the Initial Site Screening Criteria for Burial of Dead Poultry, the terms of which are hereby incorporated by reference and criteria as specified in VR-672-20-10 9VAC20-80, of the Virginia Department of Waste Management Environmental Quality, Solid Waste Management Regulations.~~

~~"Entire flock" means all of the poultry within one group of poultry that has been designated as a flock for a period of at least 21 days.~~

~~"Flock" means all of the poultry on one premises, except that, at the discretion of the department State Veterinarian, any group of poultry which is segregated from other poultry and has been so segregated for a period of at least 21 days may be considered as a separate flock.~~

~~"Incinerator" means a firebox constructed of masonry or metal in which dead poultry is burned by the use of fuel device designed for treatment of waste by combustion.~~

~~"Infectious and contagious disease" means avian influenza and exotic newcastle disease.~~

"Landfill" means an ~~engineered land burial facility for the disposal of solid waste which is so located, designed, constructed, and operated to contain and isolate the solid waste so that it does not pose a substantial present or potential hazard to human health or the environment~~ area permitted by the Department of Environmental Quality allowing the disposal of dead poultry.

"Off-farm disposal site" means any site for the disposal of dead poultry other than the farm on which the dead poultry died.

"Person" means any person, firm, partnership, corporation, or institution which engages in the raising or keeping of poultry ~~for profit~~ in this state.

"Poultry" means all chickens, ducks, turkeys or other domestic fowls being raised or kept on any premises in the state ~~for profit.~~

"Premises" means the entire tract of land, including but not limited to the buildings thereon, owned, leased or used by any person for the raising or keeping of poultry ~~for profit.~~

"Raising or keeping of poultry ~~for profit~~" means the raising or keeping of 500 or more poultry at one time ~~for the purpose of sale of such poultry or the eggs produced therefrom.~~

"Rendering" means treating dead poultry according to the process described in 9 CFR ~~§ 381.95(a)~~ 82.1.

**2VAC5-200-20. Applicability.**

This chapter shall govern the disposal of dead ~~birds~~ poultry by persons who raise or keep poultry for profit or who have entered into a contract for the raising or keeping of poultry for profit, but only when the entire flock is to be depopulated or when the entire flock dies. In all other instances ~~§ 3.1-742.1 et seq.~~ involving for profit operations, Article 2 (§ 3.2-602.4 et seq.) of Chapter 60 of Title 3.2 of the Code of Virginia, Disposal of Dead Poultry, shall govern.

**2VAC5-200-30. Disposal pits, incinerators, landfilling landfills, or rendering, or composting required of persons raising or keeping poultry ~~for profit.~~**

A. It shall be unlawful for any person to engage in the raising or keeping of poultry ~~for profit~~ on any premises within the Commonwealth of Virginia, or to enter into a contract involving the raising or keeping of poultry ~~for profit~~ with any other person, unless the premises upon which such poultry is to be raised or kept is provided with or unless the person maintaining the premises whereon the poultry is raised or kept has access to:

1. A disposal pit;
2. An incinerator;
3. A renderer through a bona fide contract for rendering;

4. A landfill, through a bona fide contract for the disposal of dead poultry therein.

5. Composting either on site, in the poultry house, or at another site approved by the State Veterinarian; or

6. Any other method approved by the State Veterinarian.

B. Provisions governing disposal pits.

1. If possible, an area away from public view should be selected.

2. No person engaged in the raising or keeping of poultry ~~for profit~~ and no person who has entered into a contract involving the raising or keeping of poultry ~~for profit~~ with any other person shall construct or use any pit for the disposal of poultry unless it conforms to the definition of a disposal pit contained in this chapter.

3. Any person engaged in the raising or keeping of poultry ~~for profit~~ and any person who has entered into a contract involving the raising or keeping of poultry ~~for profit~~ with any other person shall, before using a disposal pit, obtain approval for its use as required by state law.

C. Provisions governing incinerators.

1. If possible, an area away from public view should be selected.

2. No person engaged in the raising or keeping of poultry ~~for profit~~ and no person who has entered into a contract involving the raising or keeping of poultry ~~for profit~~ with any other person shall construct or use an incinerator for the disposal of dead poultry unless it ~~is constructed of masonry or metal~~ and has the capability to burn within a time frame approved by the State Veterinarian all poultry raised or kept on the premises at any time.

3. Any person engaged in the raising or keeping of poultry ~~for profit~~ and any person who has entered into a contract involving the raising or keeping of poultry ~~for profit~~ with any other person shall, before using an incinerator on his premises to dispose of birds, obtain approval for its use as required by state law.

D. Provisions governing bona fide rendering contract. No person engaged in the raising or keeping of poultry ~~for profit~~ and no person who has entered into a contract involving the raising or keeping of poultry ~~for profit~~ with any other person shall dispose of dead poultry through rendering unless he owns a rendering facility, or unless he has entered into a bona fide contract for the rendering of such dead poultry, which contract shall be part of the plan for disposal of dead poultry specified by 2VAC5-200-50 of this chapter.

E. Provisions governing bona fide contract with a landfill. No person engaged in the raising or keeping of poultry ~~for profit~~ and no person who has entered into a contract involving the raising or keeping of poultry ~~for profit~~ with any other

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person shall dispose of dead poultry in a landfill unless he owns a landfill, or unless he has entered into a bona fide contract for such disposal of dead poultry in a landfill, which contract shall be part of the plan for the disposal of dead poultry specified by 2VAC5-200-50 of this chapter.

## F. Provisions governing composting.

1. If possible, an area from public view should be selected.
2. No person engaged in the raising or keeping of poultry and no person who has entered into a contract involving the raising or keeping of poultry with any other person shall construct or use any facility for the composting of dead poultry unless it conforms to best management practices or acceptable composting guidance as approved by the State Veterinarian.
3. Any person engaged in the raising or keeping of poultry and any person who has entered into a contract involving the raising or keeping of poultry with any other person shall, before composting, obtain approval for composting as required by state law.

## **2VAC5-200-50. Plans for disposal of dead poultry.**

A. No person shall engage in the raising or keeping of poultry ~~for profit~~ and no person shall enter into a contract involving the raising or keeping of poultry ~~for profit~~ with any other person unless he ~~files with the State Veterinarian a plan, has in his possession a dead poultry disposal plan~~ embracing at a minimum provisions consistent with the requirements of this chapter for the disposal of an entire flock of dead poultry. The plan shall be made available upon request of the State Veterinarian or his representative.

B. ~~No person may implement the plan or any amendment to it until it is approved by the State Veterinarian. No person who owns a flock of less than 500 poultry shall be required to have a plan for the disposal of dead poultry. In the event a flock of less than 500 poultry needs to be depopulated or dies, the State Veterinarian, in consultation with the owner, will determine a method of disposal that complies with disease prevention protocol and is environmentally sound.~~

C. Nothing in this section shall prohibit a person from ~~fileing~~ developing a plan on behalf of its contract growers.

## **2VAC5-200-60. Transportation of dead poultry; sanitation.**

A. No person may transport any dead poultry from any premises to an off-farm disposal site without the prior approval, granted ~~by permit~~ on a case-by-case basis, by the State Veterinarian or his representative.

B. No person may transport dead poultry from a farm premises to any off-farm disposal site except in leak-proof containers or leak-proof ~~trucks~~ transporting vehicles.

C. No person may transport dead poultry from a farm premises to any off-farm disposal site unless the dead poultry is enclosed in the transporting vehicle so that feathers and other debris will not be released into the environment.

D. No person may transport dead poultry from a farm premises to an off-farm disposal site unless:

1. The containers are disinfected prior to loading on the ~~truck~~ transporting vehicle and the exterior of the loaded ~~truck~~ transporting vehicle disinfected prior to leaving the farm; and
2. The entire ~~truck~~ transporting vehicle is cleaned and disinfected after unloading at the off-farm disposal site and prior to leaving the off-farm disposal site.

FORMS (2VAC5-200) (Repealed.)

~~Initial Premises Survey For Burial of Poultry, Form VDACS 03110.~~

~~Approval of Dead Poultry Disposal Plan, Form VDACS-03111, eff. 2/93.~~

VA.R. Doc. No. R08-916; Filed October 2, 2008, 1:00 p.m.

## **STATE MILK COMMISSION**

### **Final Regulation**

REGISTRAR'S NOTICE: The following model public participation guidelines 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: **2VAC15-11. Public Participation Guidelines (repealing 2VAC15-11-10 through 2VAC15-11-120).**

**2VAC15-12. Public Participation Guidelines (adding 2VAC15-12-10 through 2VAC15-12-110).**

Statutory Authority: §§ 2.2-4007.02 and 3.2-3204 of the Code of Virginia.

Effective Date: November 26, 2008.

Agency Contact: Rodney L. Phillips, Administrator, Department of Agriculture and Consumer Services, Oliver Hill Building, 102 Governor Street, Room 205, Richmond, VA 23218, telephone (804) 786-2013, FAX (804) 786-3779, or email [rodney.phillips@vdacs.virginia.gov](mailto:rodney.phillips@vdacs.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 actions; (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 12 PUBLIC PARTICIPATION GUIDELINES

### Part I Purpose and Definitions

#### **2VAC15-12-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the State Milk Commission. 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).

#### **2VAC15-12-20. 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 State Milk Commission, 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](http://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

#### **2VAC15-12-30. 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

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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.

## **2VAC15-12-40. 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 2VAC15-12-30, 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

## **2VAC15-12-50. 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.

## **2VAC15-12-60. 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.

**2VAC15-12-70. 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.

**2VAC15-12-80. 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.

**2VAC15-12-90. 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.

**2VAC15-12-100. 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.

**2VAC15-12-110. 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. R09-1423; Filed October 2, 2008, 1:00 p.m.



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# Regulations

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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### DEPARTMENT OF MINES, MINERALS AND ENERGY

#### Proposed Regulation

Title of Regulation: 4VAC25-40. Safety and Health Regulations for Mineral Mining (amending 4VAC25-40-25, 4VAC25-40-90, 4VAC25-40-120, 4VAC25-40-130, 4VAC25-40-190, 4VAC25-40-260, 4VAC25-40-350, 4VAC25-40-410, 4VAC25-40-720, 4VAC25-40-780, 4VAC25-40-800, 4VAC25-40-810, 4VAC25-40-880, 4VAC25-40-890, 4VAC25-40-1600, 4VAC25-40-2790, 4VAC25-40-2800, 4VAC25-40-2980, 4VAC25-40-3800, 4VAC25-40-3830, 4VAC25-40-3840, 4VAC25-40-3990, 4VAC25-40-4060, 4VAC25-40-4240, 4VAC25-40-4260, 4VAC25-40-4400; adding 4VAC25-40-365, 4VAC25-40-893, 4VAC25-40-925, 4VAC25-40-1095, 4VAC25-40-4061, 4VAC25-40-4062, 4VAC25-40-4063, 4VAC25-40-4064, 4VAC25-40-4065, 4VAC25-40-4066; repealing 4VAC25-40-3050 through 4VAC25-40-3090, 4VAC25-40-3110, 4VAC25-40-3120).

Statutory Authority: §§ 45.1-161.3, 45.1-161.294, 45.1-161.305 of the Code of Virginia.

Public Hearing Information:

November 12, 2008 - 10 a.m. - Department of Mines, Minerals and Energy, 900 Natural Resources Drive, Charlottesville, VA

Public Comments: Public comments may be submitted until 5 p.m. on December 26, 2008.

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

Basis: The Department of Mines, Minerals and Energy is authorized to promulgate regulations necessary to the performance of its duties under § 45.1-161.3 of the Code of Virginia. Sections 45.1-161.294 and 45.1-161.305 require that the director of the department promulgate regulations to ensure safe working conditions and practices at underground and surface mineral mines, respectively. This authority is mandatory.

Purpose: The purpose of the regulation at 4VAC25-40, Safety and Health Regulations for Mineral Mining, is to provide for the protection of persons and property on and around mineral (noncoal) mines. The proposed action is the result of periodic review. Even though no public comments were received during the review comment period, agency staff identified sections that would benefit from amendments as proposed herein. The amendments will improve this chapter by making technical corrections, clarifying unclear language, updating

references, making the regulation internally consistent and consistent with the Code of Virginia, and strengthening certain provisions relating to mine safety. Because the regulation is specifically intended to protect persons and property from the effects of mining, the agency has determined that the proposed amendments are essential to protect the health, safety and welfare of citizens.

Substance: The intended action will amend provisions of an existing regulation. Unclear language in various sections will be clarified. Sections identified for clarification are those dealing with examination and inspection of workings, compliance with regulations, repairing machinery, exposure to airborne contaminants, loaders in operation, scaling bars, and open flame restrictions.

Several sections will be amended to make them internally consistent with other sections and with the Code of Virginia. References to external documents and the Code of Virginia will be corrected to reflect more recent publication dates of those documents; references to federal and other agencies that have changed their names will be updated. Corrections will be made to typographical and other technical errors.

In Part XV of the chapter, a number of sections will be moved to different articles to more efficiently organize the rules. Six sections dealing with mine rescue and evacuation will be moved from Article 2, Fire Prevention and Control, to Article 9, Safety Program. The heading for Article 6, Loading, Hauling, and Dumping, will be moved from the beginning of 4VAC25-40-3590 to the beginning of 4VAC25-40-3560 to fully encompass sections dealing with hauling. The heading for Article 10, Personnel Hoisting, will be moved from the beginning of 4VAC25-40-4090 to the beginning of 4VAC25-40-4070 to fully encompass sections dealing with hoisting.

During the periodic review, the agency identified sections dealing with mineral mine safety that would benefit from being strengthened. The agency intends to add a section requiring drill logs for boreholes intended for blasting. The agency also intends to amend other sections dealing with blasting to: require reporting of flyrock incidents; require review of drill logs before blasting; require that areas containing loaded boreholes be posted as well as barricaded, if not guarded; require that drill logs be kept as part of the blast record; and require that electronic detonation systems be of an approved type. Regarding underground rescue in mineral mines, the agency intends to amend and generally strengthen sections dealing with mine rescue stations, equipment, crews, and self-contained breathing apparatus. Also for the purpose of improved safety, the agency intends to add one new section requiring that structures be substantial and well maintained.

Issues: The proposed action will provide certain advantages to the public, particularly those who live near or work in mineral mines. Strengthening sections dealing with preparations for blasting and requiring mine operators to have

a plan to minimize the affects of blasting on adjacent properties are intended to reduce citizen complaints related to blasting. The strengthening of mine safety provisions such as those dealing with underground mine rescue and self-rescue devices will improve worker safety. Correcting existing unclear, inconsistent, or incorrect language will make the regulation more accurate and easy to understand. No disadvantages are foreseen for the public.

Since the amended regulations will be enforced with existing personnel in existing programs, there will be no additional cost or any other anticipated disadvantages for the Commonwealth.

At least one of the amended provisions will cause some mineral mine operators to incur additional costs, but the magnitude of these costs is not considered by the agency to be excessive in proportion to the safety benefits returned.

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

Summary of the Proposed Regulation. The Department of Mines, Minerals and Energy (DMME) proposes to amend the existing Safety and Health Regulations for Mineral Mining for better protection of persons and property on and around mineral mines. DMME proposes to amend sections dealing with blasting to require that: 1) flyrock incidents be reported to the Division of Mineral Mining (division) immediately and details noted in the blast record; 2) the certified blaster in charge review the drill logs to determine specific downhole conditions prior to loading the shot; 3) areas containing loaded boreholes be posted as well as barricaded, if not guarded; 4) drill logs for boreholes intended for blasting be included in the blast record; 5) mine operators maintain a plan to control the affects of blasting on adjacent areas; and 6) electronic detonation systems be approved by the Director of the division and used according to manufacturer's instructions. Sections regarding underground rescue and evacuation will be reorganized and strengthened. One section is added to require that structures shall be of substantial construction and maintained in safe condition. DMME also proposes to make corrections and clarifications to the existing language.

Results of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Detailed analysis of the benefits and costs can be found in the next section.

Estimated Economic Impact. The purpose of the existing Safety and Health Regulations for Mineral Mining is to provide for the protection of persons and property on and around mineral mines. DMME proposes to amend the sections dealing with blasting for improved safety. One of the proposed changes is to require that flyrock incidents be reported to the division immediately and details noted in the blast record. Flyrock means any uncontrolled material

generated by the effect of a blast that is hazardous to persons, or to property not owned or controlled by the operator. The existing regulations do not specifically require the reporting of flyrock incidents. However, according to DMME, mine operators generally report flyrock incidents. Thus adding this proposed requirement will allow DMME to better monitor the blasting and will help in minimizing the effects of the flyrock incidents, without causing any significant costs to the mine operators.

The proposed regulation also requires that areas containing loaded boreholes be posted as well as barricaded, if not guarded. The current regulation requires that areas containing boreholes be either guarded or barricaded. Requiring the areas to be posted in addition to being barricaded when not guarded will prevent unauthorized entry and protect people living near the mineral mines. This proposed change will likely not cause any significant costs because a sign or other visual indications will serve the need for posting.

DMME proposes to require that drill logs for boreholes intended for blasting be included in the blast record and to add a section specifying the required information to be included in the drill logs. The certified blaster in charge will be required to review the drill logs to determine specific downhole conditions prior to loading the shot. According to DMME, reviewing the drill log may take 5 to 10 minutes. Currently it is standard practice for the drillers to prepare drill logs and for the certified blaster to review the drill log. Some of the blasting contractors already have internal policies that require the review of drill logs by their blasters. Therefore, these requirements will likely not cause any significant costs for the operators or the certified blasters. Requiring the blaster to review the logs prior to loading the shots will help the blaster gain more accurate knowledge of the blastholes he is loading, which will likely improve the loading process and reduce the possibilities of incidents.

According to the proposed regulation, each mine operator shall maintain a plan to control the effects of blasting on adjacent areas. This plan shall be documented and made available for review by the division upon request. This proposed change will improve protection of areas adjacent to the blasting and may help in dealing with citizen complaints related to blasting. DMME reports that there are about 130 mineral mines in the Commonwealth that use explosives. These mineral mines will be required to develop such a plan, which will cause an estimated one-time cost of approximately \$300 each on average.

Another proposed change relating to blasting requires that the electronic detonation systems be approved by the Director of the division and used according to manufacturer's instruction. The electronic detonation system is a fairly new technology and is becoming more widespread due to improvement in blasting that they provide. This proposed requirement will

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assure that the types to be employed have been approved as safe.

DMME proposes to amend and strengthen sections regarding underground rescue and evacuation. As one of the proposed changes, telephones are required to be supplied in refuge areas, in addition to adequate air and water supplies, for improved communications during emergencies. According to DMME, currently there are only two underground mines in the Commonwealth, which shall comply with sections regarding underground rescue and evacuation. Neither of them is required to have refuge areas due to other sections of the regulations. And, both of the underground operators have spare telephone units that could be used in refuge areas when needed. Therefore, this proposed requirement will likely not cause any significant costs for these two underground mine operations. For future underground operations, DMME estimates that a new telephone supplied in refuge areas may cost approximately \$300.

Another proposed change regarding underground rescue is that a written plan for the number, type, and location of self-rescue devices will be required and shall be sufficient for the number of people working underground and the possible hazards of the mine. And, the escape and evacuation plan shall include a plan for instruction of mine workers and rescue personnel, as well as a statement of the location and availability of mine rescue personnel and equipment. The mine maps shall include more information than currently required. These proposed changes regarding underground rescue and evacuation will likely increase worker safety and minimize the potential hazard in the mineral mines. DMME estimates that it will take the draftsman or engineer 5 to 10 minutes to add the locations onto the map. The other proposed requirements about the plans will cause minimal costs to the mine operators because they are currently addressed in the federal regulations (30 CFR Part 56 & 57). Adding these requirements to the existing regulation will make the regulation consistent with the federal regulations.

The proposed regulation will allow small mines employing fewer than 75 persons underground to request in writing and obtain approval from the director of DMME for an alternative mine rescue capability. Under the current regulation, smaller mines are required to have at least one person so trained for each 10 persons employed underground. This proposed change will provide small mines with flexibility in developing a mine rescue capability that is most suitable to their situation and will likely benefit these small mines.

DMME also proposes to add one section requiring that structures shall be of substantial construction and maintained in safe condition. "Substantial construction" means construction of such strength, material, and workmanship that the object will withstand all reasonable shock, wear, and usage to which it will be subjected. The current regulation has one section stating that machinery and equipment shall be

maintained in accordance with manufacturer's specifications. DMME proposes to add a section about the structure to ensure that structures be in good condition.

Besides the above proposed changes, DMME will also make corrections and update references to the existing language to improve clarity of the regulation, which will reduce confusion and benefit the regulatory community.

**Businesses and Entities Affected.** According to DMME, there are approximately 440 mineral mines in the Commonwealth of Virginia. There are approximately 130 mineral mines that use explosives and two underground mines. People working or living near the mineral mines will benefit from the proposed regulation.

**Localities Particularly Affected.** The proposed regulations will affect all localities in the Commonwealth that have mineral mines. According to DMME, 91% of Virginia's counties have mineral mines governed by these regulations.

**Projected Impact on Employment.** The proposed regulation will improve worker safety of the mineral mines and will likely have a positive impact on the number of people working in those mines. Some of the proposed changes may cause a few minutes' extra work for the relevant persons.

**Effects on the Use and Value of Private Property.** The proposed regulation will improve safety of the mineral mines and will better protect the property on and around the mines, which may have a positive impact on the value of these properties. The proposed requirement of maintaining a plan to control the effects of blasting on adjacent areas will cause a one-time cost of approximately \$300 to the mineral mines on average, which may have a slight negative impact on their profits and thus the value of their property.

**Small Businesses: Costs and Other Effects.** Small mineral mines that use explosives will likely incur an estimated one-time cost of approximately \$300 each to maintain a plan to control the effects of blasting on adjacent areas. Allowing small mines with fewer than 75 persons underground to request and obtain approval for an alternative mine rescue capability will provide these mines with more flexibility in developing a mine rescue capability and will likely benefit these small mines. According to DMME, most of the 440 mineral mines are small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed regulation will improve worker safety and provide for better protection of persons and properties from the effects of mining. Small mineral mines will incur a one-time cost of \$300 to maintain a plan to control the effects of blasting on adjacent areas. Small mines with fewer than 75 persons underground may benefit from more flexibility in developing a mine rescue capability. There is no alternative method that can achieve the same purpose with a lower adverse impact.

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.

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

Summary:

*As a result of a periodic review, the Department of Mines, Minerals and Energy (DMME) is amending 4VAC25-40, Safety and Health Regulations for Mineral Mining. The amendments improve this chapter by making technical corrections, clarifying unclear language, updating references, making the regulation internally consistent and consistent with the Code of Virginia, and strengthening certain provisions relating to mine safety. Sections to be strengthened relate to blasting, mine rescue, and construction and maintenance of mine structures.*

**EDITOR'S NOTICE:** Also as a result of the periodic review, DMME is moving the designations for Articles 6 and 10 of Part XV such that they precede 4VAC25-40-3560 and 4VAC25-40-4070, respectively.

**4VAC25-40-25. Purpose and authority.**

The purpose of this chapter is to provide for the protection of persons and property on and around mineral mines. The chapter works with the Virginia Mineral Mine Safety Act

(§ 45.1-161.292:1 et seq.) of the Code of Virginia (as shown in Mineral Mine Safety Laws of Virginia, ~~1997~~ 2005 edition). Refer to the Act for other definitions and requirements related to this chapter.

**4VAC25-40-90. Documents incorporated by reference.**

A. 1996 Threshold Limit Values and Biological Exposure Indices published by the American Conference of Governmental Industrial Hygienists.

B. American Table of Distances, 1991 edition, published by the Institute of Makers of Explosives.

C. National Electrical Code, ~~1996~~ 2008 edition, published by the National Fire Protection Association.

D. Virginia Department of Labor and Industry, Boiler and Pressure Vessel Safety Division, Boiler and Pressure Vessel Regulations, amended ~~1995~~ 2007 by the Virginia Department of Labor and Industry.

E. Bureau of Mines Instruction Guide 19, Mine Emergency Training, U.S. Department of Labor, 1972 edition.

F. Blasting Guidance Manual, U.S. Department of Interior, Office of Surface Mining Reclamation and Enforcement, 1987 edition.

G. The American National Standard for Wire Rope for Miners, M11.1-1980, published by the American National Standards Institute.

H. Addresses for references may be obtained from the division.

**4VAC25-40-120. When foreman required.**

When three or more persons are working in a mine, a certified mine foreman shall be employed who shall ensure that all activities under the foreman's supervision are conducted in a safe manner in compliance with applicable laws and regulations adopted by the department. The director may designate an approved competent person to perform the duties of a certified ~~surface mine~~ surface mine foreman except for the ~~pre-shift~~ pre-shift examination made at the beginning of each shift.

**4VAC25-40-130. Examination by foreman.**

The certified mine foreman shall examine active workings at the beginning of each shift. Any hazardous or unsafe condition shall be corrected prior to personnel starting work in the affected area. If the hazardous or unsafe condition cannot be corrected immediately, the affected area shall be barricaded and posted with warning signs. A documented record of the examination shall be made and shall include the date, areas examined, time work began in the area, and time of examination. A documented record of hazards found and corrective actions taken shall also be made. The records shall be signed or certified by the certified mine foreman making the examination. ~~A record~~ Records of the ~~daily inspection~~

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examinations made at the beginning of each shift shall be kept for one year.

#### **4VAC25-40-190. Compliance with regulations.**

~~Mine employees~~ Miners shall comply with all state safety and health regulations applicable to their task or duties.

#### **4VAC25-40-260. Posting hazards.**

Areas containing safety or health hazards that are not ~~immediate~~ immediately obvious to personnel shall be barricaded or posted with warning signs specifying the hazard and proper safety procedures.

#### **4VAC25-40-350. Repairing machinery.**

Repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustments. Energy sources, other than those related to electricity (which are covered under 4VAC25-40-2140 and 4VAC25-40-2150) or internal combustion (which are covered under 4VAC25-40-1685), which pose a hazard to miners, shall be tagged out and ~~signed by~~ marked by a means that identifies the individuals doing the work, and locked out if practical, by each authorized person exposed to the hazard. Tags or locks shall be removed only by the persons who installed them or by an authorized person, after ensuring that affected persons are in the clear.

#### **4VAC25-40-365. Construction and maintenance of structures.**

Structures shall be of substantial construction and maintained in safe condition.

#### **4VAC25-40-410. Benches.**

Benches shall be wide enough to allow safe operation and passage of equipment.

#### Part V

Air Quality and Physical Agents—Surface and Underground

#### **4VAC25-40-720. Employee exposure limits to airborne contaminants.**

With respect to airborne contaminants, the following shall apply:

1. Employees shall be withdrawn from areas where airborne contaminants given a "C" designation in Threshold Limit Values and Biological Exposure Indices are present in concentrations that exceed specified TLVs.
2. Control of employee exposure to harmful airborne contaminants shall be by feasible engineering control methods. If such control measures are not available, an approved program of controlling employee exposure to airborne contaminants shall be implemented by the operator. Miners exposed for short periods to gas, dust, fumes and mist-inhalation hazards shall wear ~~permissible~~

acceptable respiratory equipment appropriate for the hazard. When the exposure is for prolonged periods, other measures to protect workers or to reduce the hazard shall be taken.

#### Part VI

Explosives—Surface and Underground

#### **4VAC25-40-780. Storage of explosive materials.**

A. Detonators and explosives, other than blasting agents, shall be stored in magazines accepted by the Institute of Makers of Explosives or other approved agency.

B. Detonators shall not be stored in the same magazine with explosives.

C. Explosives magazines shall be:

1. Located in accordance with the American Table of Distances;
2. Detached structures located away from power lines, fuel storage areas, and other possible sources of fire;
3. ~~Constructed substantially~~ Of substantial construction and constructed of noncombustible material or covered with fire-resistant material;
4. Reasonably bullet resistant;
5. Electrically bonded and grounded if constructed of metal;
6. Made of nonsparking material on the inside, including floors;
7. Provided with adequate and effectively screened ventilation openings near the floor and ceiling;
8. Kept locked securely when unattended;
9. Posted with suitable danger signs so located that a bullet passing through the sign will not strike the magazine;
10. Used exclusively for storage of explosives or detonators and blasting-related materials;
11. Kept clean and dry in the interior and in good repair;
12. Unheated, unless heated in a manner that does not create a fire or explosion hazard. Electrical heating devices shall not be used inside a magazine; and
13. Located at least 300 feet away from any underground mine opening, occupied building, public road, or private road not used in connection with the mine.

D. An accurate inventory log of explosives stored in the magazine shall be maintained on site.

E. Any theft or unaccounted loss of explosives shall be reported immediately by telephone to local police, state police, the U.S. Department of ~~Treasury~~ Justice, Bureau of

Alcohol, Tobacco ~~and~~ Firearms, and Explosives and the Division of Mineral Mining.

F. Smoking or open flames shall be prohibited within 50 feet of explosives magazines or blasting agents storage facilities.

G. Areas surrounding magazines and facilities for the storage of blasting agents shall be kept clear of combustible materials, except live trees over 10 feet tall, for a distance of 50 feet in all directions.

H. Prior to repairs of a magazine which may cause a fire or explosion, the contents shall be removed to a safe location and guarded.

I. Explosives stored in magazines shall be:

1. Arranged so that the oldest stock is used first;
2. Separated by brand and type;
3. Stored with their top sides up; and
4. Stacked in a stable manner not over eight feet high.

J. When stored with other explosives, ammonium nitrate fuel oil blasting agents shall be physically separated to prevent contamination.

K. Damaged or deteriorated explosives and blasting agents shall be destroyed in a safe manner by a certified blaster.

#### **4VAC25-40-800. Use of explosives.**

A. A certified blaster shall be in direct charge of blasting activities.

B. Persons who assist in blasting activities shall be under the direct supervision of the certified blaster in charge and shall be alerted to the hazards involved.

C. Black powder or safety fuse shall not be used without approval from the director. Special approvals shall specify use restrictions and procedures necessary for safe storage, transportation, and use.

D. The design and loading of a blast shall provide sufficient burden, spacing, and stemming to prevent flyrock or other dangerous effects. Flyrock incidents shall be reported to the division immediately and details noted in the blast record.

E. Boreholes shall not be drilled where there is a danger of intersecting a loaded or misfired hole.

F. No person shall smoke or use an open flame within 50 feet of explosives or detonators.

G. Prior to bringing explosives and detonators to the blast site, the certified blaster in charge shall:

1. ~~Weather~~ Monitor weather conditions ~~shall be monitored~~ to ensure safe loading and firing;
2. ~~The~~ Inspect the blast site ~~shall be inspected~~ for hazards;

~~3. The~~ Inspect and clear the boreholes ~~shall be inspected and cleared~~ of obstructions; and

~~4. Personnel~~ Remove personnel and equipment, except those used in loading the shot, ~~shall be removed~~ from the blast site.

~~H.~~ The certified blaster in charge shall review the drill logs to determine specific downhole conditions prior to loading the shot.

~~H. I.~~ Boreholes to be blasted shall be loaded as near to the blasting time as practical. Loaded shots shall be blasted as soon as possible upon completion of loading and connection to the initiation device. Surface blasting shall be conducted during daylight hours only.

~~I. J.~~ Explosives shall be kept a safe distance from detonators until they are made into a primer.

~~J. K.~~ Primers shall not be made up or assembled in advance of the borehole being loaded.

~~K. L.~~ Only wooden or other nonsparking implements shall be used to punch holes in an explosive cartridge.

~~L. M.~~ Detonators shall be inserted completely and securely into explosive cartridges used as primers. Priming shall be sufficient to detonate the explosive column in the borehole.

~~M. N.~~ Primers shall be inserted into the borehole slowly to prevent accidental detonation from impact, and tamping shall not be done directly on the primer.

~~N. O.~~ Tamping poles shall be constructed of wood and/or nonsparking materials.

~~O. P.~~ Unused explosives, detonators, and blasting agents shall be returned to the magazine or storage facility upon completion of loading activities and prior to firing the blast.

~~P. Q.~~ Equipment and machinery used to load or stem boreholes shall not be operated over loaded boreholes for any reason. Areas containing loaded boreholes shall be guarded or barricaded and posted to prevent unauthorized entry.

~~Q. R.~~ Blast warning signals shall be established and posted at the mine. Audible warning signals shall be given prior to firing a blast.

~~R. S.~~ All personnel shall be removed from the blast area prior to connection to the initiation device and the firing of a blast.

~~S. T.~~ Blasting personnel shall fire shots from a safe location.

~~T. U.~~ A post-blast examination of the blast area shall be made by the certified blaster in charge. Other personnel shall not return to the blasting area until an all clear signal is received from the certified blaster in charge.

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## 4VAC25-40-810. Recordkeeping.

A detailed record of each surface blast shall be prepared immediately by the certified blaster. Records shall be maintained for three years and subject to inspection by the division mine inspectors. Records shall contain the following information:

1. Name of company or contractor;
2. Location, date, and time of blast;
3. Name, signature, and certification number of the certified blaster in charge;
4. Type of material blasted;
5. Number of holes, and burden and spacing for each hole;
6. ~~Diameter, depth and condition~~ Drill logs of boreholes as required by 4VAC25-40-1095;
7. Types of explosives used;
8. Total amount of explosives used;
9. Maximum amount of explosives per delay period of eight milliseconds or greater;
10. Method of firing and type of circuit;
11. Direction and distance in feet to nearest dwelling house, public building, school, church, commercial or institutional building neither owned nor leased by the person conducting the blasting;
12. Weather conditions (including such factors as wind directions, etc.);
13. Height or length of stemming;
14. Whether mats or other protections were used;
15. Type of detonators used and ~~delay periods used~~ timing of detonation for each detonator used;
16. The person taking the seismograph reading shall accurately indicate exact location of seismograph, if used, and shall also show the distance of seismograph from blast;
17. Seismograph records, including seismograph readings, where required:
  - a. Name and signature of person operating seismograph;
  - b. Name of person analyzing the seismograph record; and
  - c. Seismograph reading; ~~and~~
18. Maximum number of holes per delay period of eight milliseconds or greater; and
19. All anomalies or abnormalities occurring during the execution of the blast and actions taken to correct or address them.

## 4VAC25-40-880. Ground vibration from blasting.

A. Ground vibration, measured as peak particle velocity resulting from blasting, shall not exceed the limits set forth below at any inhabited building not owned or leased by the operator, without approval of the director. A seismographic record shall be provided for each blast.

Distance (D) to nearest inhabited building, feet	Peak Particle Velocity, inches per second	Ds (when not using a seismograph)
0 - 300	1.25	50
301 - 5,000	1.00	55
5,001 and beyond	0.75	65

B. ~~If seismic~~ Seismic monitoring of each blast ~~is not~~ shall be conducted, ~~blasting shall be in accordance~~ unless the scaled distance, Ds, as calculated with the following scaled distance formulas, is 90 or greater:

$$W = \left(\frac{D}{D_s}\right)^2 \quad D_s = \frac{D}{\sqrt{W}}$$

W = Maximum charge weight of explosives per delay period of 8.0 milliseconds or more.

D = Distance in feet from the blast site to the nearest inhabited building not owned or leased by the mine operator.

~~Ds = Scaled distance factor shown in table in subsection A of this section.~~

C. The operator may use the alternative ground vibration limits shown below to determine the maximum allowable ground vibration. If these limits are used, a seismographic record including both particle velocity and vibration frequency levels shall be kept for each blast. Ground vibration levels and airblast levels are taken from the Blasting Guidance Manual.

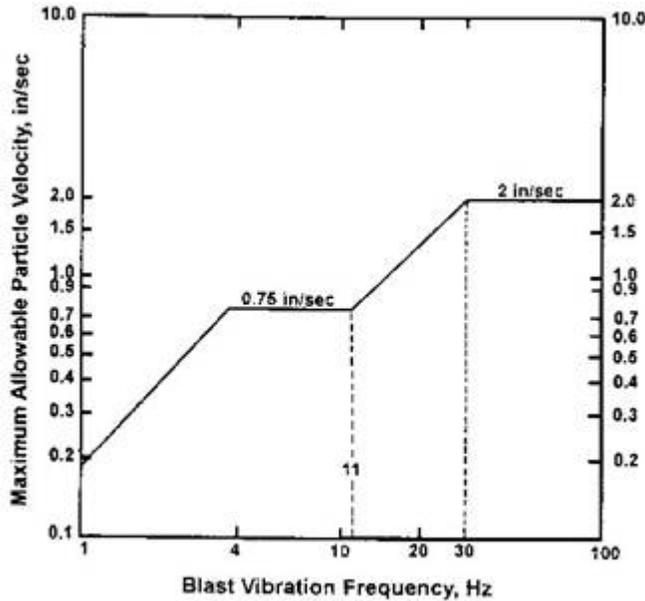


Figure 1. Alternative blasting level criteria. (Source modified from figure B-1. Bureau of Mines R18507)

**4VAC25-40-890. Airblast Air overpressure limits.**

~~Airblast~~ Air overpressure resulting from surface blasting shall not exceed ~~129~~ 133 decibels, as measured with a 2 Hz or lower flat response microphone, at any ~~private~~ inhabited building not owned or leased by the operator ~~unless an alternate level based on the sensitivity of the seismograph microphone as specified below is being used.~~

Lower Frequency Limit of Measuring System, in Hz	Max. Level in dB (3dB)
1 Hz or lower – flat response*	134 peak
2 Hz or lower – flat response	133 peak
6 Hz or lower – flat response	129 peak
C-weighted slow response	105 peak dBC

\*Only when approved by the director.

**4VAC25-40-893. Action plans.**

Each operator shall maintain a plan to control the effects of blasting on areas adjacent to the operation. This plan will be documented and made available for review by the Division of Mineral Mining upon request.

**4VAC25-40-925. Electronic detonators.**

Electronic detonation systems shall be approved by the director as providing performance equivalent to that required in 4VAC25-40-920, and shall be used in accordance with the manufacturer's instructions.

**4VAC25-40-1095. Drill logs required for boreholes intended for blasting.**

For each borehole intended for blasting, the driller shall produce a drill log as each hole is being drilled. The drill log shall include, at minimum, the name of the driller, borehole diameter, borehole depth, depth of broken material at the collar, and other geological conditions (for example, cracks, seams, voids, mud, or any other anomalies that could affect the blast) encountered during drilling. A signed copy of the drill log shall be provided to the mine operator and a copy shall be included in the record of the blast.

**4VAC25-40-1600. Avoiding loaders mobile equipment in operation.**

Persons shall remain clear of mobile equipment in operation and shall not work or pass under the buckets or booms of loaders equipment in operation.

**4VAC25-40-2790. Inspection of work area.**

Miners shall examine and test, where possible, the back, face, and ribs of their working areas, visually and by sounding, at the beginning of each shift and frequently thereafter. Competent persons shall examine the ground conditions during daily visits to ensure that proper testing and ground control practices are being followed. Loose ground shall be taken down or adequately supported before any other work is done. Ground conditions along haulageways and travelways shall be examined periodically and scaled or supported as necessary.

**4VAC25-40-2800. Scaling bar to be provided.**

A scaling bar of proper length and ~~blunt on one end design~~ shall be provided where manual scaling may be required. Picks or other short tools shall not be used for scaling when this use places the user in danger ~~of~~ from falling material.

**4VAC25-40-2980. Open flame restrictions.**

Fires shall not be built underground; open flame torches ~~and~~ candles shall not be left underground shall be attended at all times while lit.

**4VAC25-40-3050. Mine rescue stations. (Repealed.)**

~~A mine rescue station equipped with at least 10 sets of approved and properly maintained two hour, self contained, breathing apparatus, adequate supplies, and spare parts shall be maintained at mines employing 75 or more persons underground or, in lieu thereof, the mine shall be affiliated with a central mine rescue station.~~

**4VAC25-40-3060. Central or cooperative stations. (Repealed.)**

~~Mines at which individual mine rescue stations are not maintained shall affiliate with central or cooperative mine rescue stations.~~

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## **4VAC25-40-3070. Rescue apparatus. (Repealed.)**

Mine rescue apparatus acceptable to the MSHA or other approved agency shall be properly maintained for immediate use. The equipment shall be tested at least once a month and records kept of the test.

## **4VAC25-40-3080. Rescue crews to be provided. (Repealed.)**

~~At any mine employing 75 or more persons underground, at least two rescue crews (10 persons) shall be trained at least annually in the use, care, and limitations of self-contained breathing and firefighting apparatus and in mine rescue procedures. Smaller mines shall have at least one person so trained for each 10 persons employed underground. These persons shall complete, at minimum, an approved course of instruction as prescribed by MSHA's Office of Educational Policy and Development in the use, care, and maintenance of the type of breathing apparatus which will be used by the mine rescue team. The instruction shall be given by division personnel or by persons approved to give such instruction.~~

## **4VAC25-40-3090. Rescue crew personnel. (Repealed.)**

~~Rescue crews shall include supervisory and key personnel familiar with all mine installations that could prove vital to firefighting and rescue operations.~~

## **4VAC25-40-3110. Mine evacuation drills. (Repealed.)**

~~Mine evacuation drills shall be held for each shift once every six months. These evacuation drills shall involve all employees each shift and shall include:~~

- ~~1. Activation of the fire alarm system; and~~
- ~~2. Evacuation of all persons from their work areas to the surface or to designated central evacuation points at some time other than a shift change.~~

~~Records of such drills, showing the time and date, shall be kept for at least two years after each drill.~~

## **4VAC25-40-3120. Instruction in escape plans. (Repealed.)**

~~All employees involved in the escape and evacuation plan for an underground operation shall be instructed at least once each calendar year on current escape and evacuation plans, fire alarm signals, and applicable procedures to be followed in case of fire or other emergency. New employees shall receive such instructions before going underground. Whenever an employee is assigned to work in another area of the mine, he shall be instructed on the escapeway for that area at the time of such assignment. However, employees who normally work in more than one area of the mine shall be instructed at least once each calendar year in the location of escapeways for all areas of the mine in which they normally work or travel. Whenever a change is made in escape and evacuation plans and procedures for any area of the mine, all~~

~~affected employees shall be instructed of such change. Records of instruction shall be kept for two years.~~

## **4VAC25-40-3800. Steep Fixed ladders.**

~~Ladders with an inclination of more than 70° off the horizontal shall be offset and have landing gates, backguards or substantial landings at least every 30 feet. Fixed ladders shall be equipped with backguards starting at a point not more than seven feet from the bottom of the ladder meet the requirements of 4VAC25-40-1990 and 4VAC25-40-2000.~~

## **4VAC25-40-3830. Refuge areas.**

Refuge areas shall be:

1. Of fire-resistant construction, preferably in untimbered areas of the mine;
2. Large enough to accommodate readily the normal number of persons in the particular area of the mine;
3. Constructed so they can be made gas-tight; and
4. Provided with ~~compressed air lines, waterlines~~ telephones, adequate air and water supplies, suitable hand tools, and stopping materials.

## **4VAC25-40-3840. Development of escape and evacuation plan.**

A specific escape and evacuation plan, and revisions thereof, suitable to the conditions and mining system of the mine and showing assigned responsibilities of all key personnel in the event of an emergency shall be developed by the operator and set out in written form. A copy of the plan and revisions thereof shall be available to the director or an authorized representative, and any affiliated mine rescue teams. Also copies of the plans and revisions thereof shall be posted at locations convenient to all persons on the surface and underground. Such a plan shall be updated as necessary and shall be reviewed jointly by the operator and the director or his authorized representative at least once every six months from the date of the last review. The plan shall include:

1. Mine maps or diagrams showing all underground workings, locations of surface and underground ventilation fans and ventilation controls, directions of principal air flow, locations of refuge chambers, locations of first aid supplies and firefighting equipment, locations of main electrical installations and disconnects, locations of surface and underground fuel storage, locations of surface and underground facilities to store explosives and detonators, location of escape routes and locations of existing telephones or other voice communication devices (see 4VAC25-40-3120 and 4VAC25-40-3850);
2. A plan for fire prevention, warning, emergency evacuation, firefighting plan and emergency medical assistance;

3. Surface procedure to follow in an emergency, including the notification of proper authorities ~~and preparing rescue equipment and other equipment which may be used in rescue and recovery operations;~~ and

4. A statement of the location and availability of mine rescue personnel and equipment;

5. A plan for instruction of mine workers and rescue personnel; and

4. 6. A statement of the availability of emergency ~~communication~~ and communications, transportation facilities, emergency power and ventilation ~~and location of rescue personnel and equipment.~~

**4VAC25-40-3990. Self-rescue devices to be made available requirements.**

A Each mine having underground workings shall submit to the Division a plan for the number, type, and location(s) of self-rescue devices sufficient for the number of persons working underground and the hazards particular to the underground workings of the mine. At a minimum, a one hour filter self-rescue device approved by the MSHA shall be made available by the operator to all personnel underground. The filter self-rescue devices shall be maintained in a good condition by a daily visual check and weighing of the devices every six months, with maintenance records kept.

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**4VAC25-40-4060. Mine emergency and self-rescue training.**

A. On an annual basis all persons who are required to go underground shall be instructed in ~~an approved course contained in applicable sections of~~ the Bureau of Mines Instruction Guide 19, Mine Emergency Training.

B. On an annual basis all persons who are required to go underground shall be instructed in the use of the individual self-rescuer self-rescue device provided to them. The instruction shall be given by ~~division personnel or by persons who are approved by the MSHA to give such instructions;~~ provided, however, that if a division instructor or an approved instructor is not immediately available, ~~such instruction of new employees in self-rescuers may be conducted by competent persons~~ a competent person using a training model of the same type as the self-rescue device provided to the employee.

**4VAC25-40-4061. Mine rescue stations.**

Mines employing 75 or more persons underground shall either:

1. Maintain a mine rescue station equipped with at least 10 self-contained oxygen breathing apparatus, each with a

minimum of two hours capacity, along with adequate supplies and spare parts; or

2. Affiliate with central or cooperative mine rescue stations that can provide two fully equipped mine rescue teams in the event of an emergency. Such affiliations shall be in writing and must be approved annually by the director.

**4VAC25-40-4062. Rescue apparatus.**

Mine rescue apparatus shall be acceptable to the MSHA or other approved agency and shall be properly maintained for immediate use. The equipment shall be tested at least once a month and records kept of the tests for at least one year.

**4VAC25-40-4063. Rescue crews to be provided.**

At any mine employing 75 or more persons underground, at least two rescue crews of five persons each shall be trained at least annually in the use, care, and limitations of self-contained oxygen breathing and firefighting apparatus and in mine rescue procedures. The training shall be given by division personnel or by persons approved to give such instruction. Rescue crews shall include supervisory and key personnel familiar with all mine installations that could prove vital to firefighting and rescue operations.

**4VAC25-40-4064. Alternative mine rescue capability.**

Mines employing fewer than 75 persons underground shall maintain mine rescue capabilities as described in 4VAC25-40-4061 through 4VAC25-40-4063, or the operator may request in writing and obtain approval from the director for an alternative mine rescue capability. Such alternative mine rescue plans shall be subject to annual review and approval.

**4VAC25-40-4065. Mine evacuation drills.**

Mine evacuation drills shall be held for each shift once every six months. These evacuation drills shall involve all employees each shift and shall include:

1. Activation of the fire alarm system; and
2. Evacuation of all persons from their work areas to the surface or to designated central evacuation points at some time other than a shift change.

Records of such drills, showing the time and date, shall be kept for at least two years after each drill.

**4VAC25-40-4066. Instruction in escape plans.**

All persons who work underground shall be instructed at least once each calendar year on current escape and evacuation plans, fire alarm signals, and applicable procedures to be followed in case of fire or other emergency. New employees shall receive such instructions before going underground. Whenever an employee is assigned to work in another area of the mine, he shall be instructed on the escapeway for that area at the time of such assignment. However, employees who normally work in more than one

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area of the mine shall be instructed at least once each calendar year in the location of escapeways for all areas of the mine in which they normally work or travel. Whenever a change is made in escape and evacuation plans and procedures for any area of the mine, all affected employees shall be instructed of such change. Records of instruction shall be kept for two years.

#### **4VAC25-40-4240. Installation of wire ropes.**

At installation, the nominal strength (manufacturer's published catalog strength) of wire ropes used for hoisting shall meet the minimum rope strength values obtained by the following formulas in which "L" equals the maximum suspended rope length in feet:

1. Winding drum ropes (all constructions, including rotation resistant):

For rope lengths less than 3,000 feet:

Minimum Value = Static Load X (7.0 - 0.001L)

For rope lengths 3,000 feet or greater:

Minimum Value = Static Load X 4.0

2. Friction drum ropes:

For rope lengths less than 4,000 feet:

Minimum Value = Static Load X ~~(7.0 - 0.005L)~~ (7.0 - 0.0005L)

For rope lengths 4,000 feet or greater:

Minimum Value = Static Load X 5.0

3. ~~Fall~~ Tail ropes (balance ropes):

Minimum Value = Weight of Rope X 7.0

#### **4VAC25-40-4260. Wire rope examination.**

A. Wire rope attachments shall be replaced when cracked, deformed, or excessively worn.

B. At least once every 14 calendar days, each wire rope in service shall be visually examined along its entire active length for visible structural damage, corrosion, and improper lubrication or dressing. In addition, visual examination for wear and broken wires shall be made at stress points, including the area near attachments, where the rope rests on sheaves, where the rope leaves the drum, at drum crossovers, and at change of layer regions. When any visible condition that results in a reduction of rope strength is present, the affected portion of the rope shall be examined on a daily basis.

C. Before any person is hoisted with a newly installed wire rope or any wire rope that has not been examined in the previous 14 calendar days, the wire rope shall be examined in accordance with subsection B of this section.

D. At least once every six months, nondestructive tests shall be conducted of the active length of the rope, or rope diameter measurements shall be made:

1. Wherever wear is evident;
2. Where the hoist rope rests on sheaves at regular stopping points; and
3. Where the hoist rope leaves the drum at regular stopping points and at drum crossover and change of layer regions.

E. At the completion of each examination required by subsections B, C and D of this section, the person making the examination shall certify by signature and date that the examination has been made. If any condition listed in subsection ~~D~~ B of this section is present, the person conducting the examination shall make a record of the condition and the date. Certifications and records of examinations shall be retained for one year.

F. The person making the measurements or nondestructive tests as required by subsection D of this section shall record the measurements or test results and the date. This record shall be retained until the rope is retired from service.

#### **4VAC25-40-4400. Specifications for buckets used to hoist persons.**

Buckets used to hoist persons during shaft sinking operations shall be provided with adequate guide ropes and shall have crossheads equipped with safety catches and protective bonnets when the shaft depth exceeds 50 feet.

VA.R. Doc. No. R08-944; Filed October 7, 2008, 9:39 a.m.

## **VIRGINIA SOIL AND WATER CONSERVATION BOARD**

### **Proposed Regulation**

REGISTRAR'S NOTICE: The following regulation filed by the Virginia Soil and Water Conservation Board is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 9 of the Code of Virginia, which exempts general permits issued by the Virginia Soil and Water Conservation Board pursuant to the Virginia Stormwater Management Act (§ 10.1-603.1 et seq. of the Code of Virginia), if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03; and (iv) conducts at least one public hearing on the proposed general permit.

**Title of Regulation:** **4VAC50-60. Virginia Stormwater Management Program (VSMP) Permit Regulations (amending 4VAC50-60-10, 4VAC50-60-1100 through 4VAC50-60-1190; adding 4VAC50-60-1182, 4VAC50-60-1184, 4VAC50-60-1186, 4VAC50-60-1188).**

**Statutory Authority:** §§ 10.1-603.2:1 and 10.1-603.4 of the Code of Virginia.

**Public Hearing Information:**

December 2, 2008 - 7 p.m. - City of Manassas Council Chambers, 9027 Center Street, Manassas, VA

December 3, 2008 - 7 p.m. - City of Roanoke Council Chambers, Noel C. Taylor Municipal Building, 215 Church Avenue, Southwest Roanoke, VA

December 10, 2008 - 7 p.m. - City of Williamsburg Council Chambers, 412 North Boundary Street, Williamsburg, VA

**Public Comments:** Public comments may be submitted until 5 p.m. on December 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 Virginia Stormwater Management Program (VSMP) Permit Regulations by developing a new General Permit for Stormwater Discharges from Construction Activities and amending associated definitions contained in Part I of the regulations. Regulations developed under the federal Clean Water Act (33 USC § 1251 et seq.) and Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia require that VSMP permits be effective for a fixed term not to exceed five years (§ 10.1-603.2:2 B) of the Code of Virginia. The existing five-year general permit was issued on July 1, 2004, thus necessitating the promulgation of a new general permit by the June 30, 2009, expiration date.*

Part I

Definitions, Purpose, and Applicability

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

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

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

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

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA) (33 USC § 1251 et seq.) and the Act, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, and standards for sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

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

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

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

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

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

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

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

"Bioretention basin" means a water quality BMP engineered to filter the water quality volume through an engineered planting bed, consisting of a vegetated surface layer

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(vegetation, mulch, ground cover), planting soil, and sand bed, and into the in-situ material.

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

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

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

"Channel" means a natural or manmade waterway.

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

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

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

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

"Control measure" means any ~~best management practice BMP, stormwater facility,~~ or other method used to ~~prevent, or reduce~~ minimize the discharge of pollutants to surface state waters.

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

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

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

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

discharge is calculated as the average measurement of the pollutant over the day.

"Department" means the Department of Conservation and Recreation.

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

"Direct discharge" means the discharge of a pollutant.

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

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

"Discharge of a pollutant" means:

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

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

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

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

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

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

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

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

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

"Facilities or equipment" means buildings, structures, process or production equipment or machinery that form a permanent part of a new source and that will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the new source or water pollution treatment for the new source.

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

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

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

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

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

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

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

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

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

"Indian country" means (i) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (ii) all dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

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

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

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

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

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

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

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

1. Located in an incorporated place with a population of 250,000 or more as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix F (2000));
2. Located in the counties listed in 40 CFR Part 122 Appendix H (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;
3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:
  - a. Physical interconnections between the municipal separate storm sewers;
  - b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;
  - c. The quantity and nature of pollutants discharged to surface waters;
  - d. The nature of the receiving surface waters; and
  - e. Other relevant factors.
4. The board may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in this definition.

"Linear development project" means a land-disturbing activity that is linear in nature such as, but not limited to, (i) the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; ~~and~~ (iii) highway construction projects; and (iv) construction of stormwater channels and stream restoration activities. Private subdivision roads or streets shall not be considered linear development projects.

"Local stormwater management program" or "local program" means a statement of the various methods employed by a locality to manage the quality and quantity of runoff resulting from land-disturbing activities and shall

include such items as local ordinances, permit requirements, policies and guidelines, technical materials, inspection, enforcement, and evaluation consistent with the Act and this chapter. The ordinance shall include provisions to require the control of after-development stormwater runoff rate of flow, the proper maintenance of stormwater management facilities, and minimum administrative procedures.

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

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

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

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

"Manmade" means constructed by man.

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

"Maximum extent practicable" or "MEP" means the technology-based discharge standard for municipal separate storm sewer systems established by CWA § 402(p). MEP is achieved, in part, by selecting and implementing effective structural and nonstructural best management practices (BMPs) and rejecting ineffective BMPs and replacing them with effective best management practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff management knowledge increases. As such, the operator's MS4 program must continually be assessed and modified to incorporate improved programs, control measures, BMPs, etc., to attain compliance with water quality standards.

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

1. Located in an incorporated place with a population of 100,000 or more but less than 250,000 as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix G (2000));
2. Located in the counties listed in 40 CFR Part 122 Appendix I (2000), except municipal separate storm sewers

that are located in the incorporated places, townships or towns within such counties;

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

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

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

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

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

- 1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created

by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters;

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

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

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

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

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

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

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

This definition includes an indirect discharger that commences discharging into surface waters after August 13, 1979. It also includes any existing mobile point source (other

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than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

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

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

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

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

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

"Operator" means the owner or operator of any facility or activity subject to the VSMP permit regulation under the VSMP program. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions). In the context of stormwater discharges from Municipal Separate Storm Sewer Systems (MS4s), operator means the operator of the regulated MS4 system.

"Outfall" means, when used in reference to municipal separate storm sewers, a point source at the point where a

municipal separate storm sewer discharges to surface waters and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other surface waters and are used to convey surface waters.

"Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

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

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

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

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

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

"Person" means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body (including but not limited to a federal, state, or local entity), any interstate body or any other legal entity.

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

"Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container,

rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

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

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

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

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

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

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

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

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

"Qualified personnel" means a licensed professional engineer, responsible land disturber, or other knowledgeable person who holds a certificate of competency from the board in the area of project inspection or combined administrator.

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

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

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

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

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

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

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

"Sand filter" means a contained bed of sand that acts to filter the first flush of runoff. The runoff is then collected beneath

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the sand bed and conveyed to an adequate discharge point or infiltrated into the in-situ soils.

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

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

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

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

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

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

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

"Small construction activity" means:

1. Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre, or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if

the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The board may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the board that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

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

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

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

"State" means the Commonwealth of Virginia.

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

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

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

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

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

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

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

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

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

"Stormwater extended detention basin" or "extended detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure over a specified period of time to a downstream conveyance system for the purpose of water quality enhancement or stream channel erosion control. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible

when compared to the outlet structure discharge rates and, therefore, are not considered in the facility's design. Since an extended detention basin impounds runoff only temporarily, it is normally dry during nonrainfall periods.

"Stormwater extended detention basin-enhanced" or "extended detention basin-enhanced" means an extended detention basin modified to increase pollutant removal by providing a shallow marsh in the lower stage of the basin.

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

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

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

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

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

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

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

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

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

"Surface waters" means:

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

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

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

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

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

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

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

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

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

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

"Virginia Stormwater BMP Clearinghouse website" means a website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations and that is jointly created by the department and the Virginia Water Resources Research Center subject to advice to the director from a permanent stakeholder advisory committee.

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

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

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

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

"Water quality standards" or "WQS" means provisions of state or federal law that consist of a designated use or uses for the waters of the Commonwealth and water quality criteria for such waters based on such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water, and serve the purposes of the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), the Virginia Stormwater Management Act (§ 10.1-603.1 et seq. of the Code of Virginia), and the federal Clean Water Act (33 USC § 1251 et seq.).

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

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

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

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

Part XIV

General Virginia Stormwater Management Program (VSMP)  
Permit for Discharges of Stormwater from Construction  
Activities

**4VAC50-60-1100. Definitions.**

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

"Commencement of construction" means the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities (e.g., stockpiling of fill material).

"Final stabilization" means that one of the following situations has occurred:

1. All soil disturbing activities at the site have been completed and a permanent vegetative cover has been established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform (e.g., evenly distributed, without large bare areas), mature enough to survive, and will inhibit erosion.
2. For individual lots in residential construction, final stabilization can occur by either:
  - a. The homebuilder completing final stabilization as specified in subdivision 1 of this definition; or
  - b. The homebuilder establishing temporary stabilization, including perimeter controls for an individual lot prior to occupation of the home by the homeowner, and informing the homeowner of the need for, and benefits of, final stabilization.

3. For construction projects on land used for agricultural purposes (e.g., pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to surface waters, and areas that are not being returned to their preconstruction agricultural use must meet the final stabilization criteria specified in subdivision 1 or 2 of this definition.

"Minimize" means to prevent, reduce, or eliminate using practicable control measures to meet the conditions of this permit.

**4VAC50-60-1110. Purpose.**

This general permit regulation ~~governs~~ authorizes stormwater discharges from construction activities. For the purposes of this part, these discharges are defined as stormwater discharges associated with large construction

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activity, and stormwater discharges associated with small construction activity. Stormwater discharges associated with other types of industrial activity shall not have coverage under this general permit. This general permit covers only discharges through a point source to ~~a surface water state waters~~ or through a municipal or nonmunicipal separate storm sewer system to surface state waters. Stormwater discharges associated with industrial activity that originate from the site after construction activities have been completed and the site has undergone final stabilization are not authorized by this permit. The goal of this permit is to minimize stormwater pollutants from construction activity by requiring that the operator plan and implement appropriate control measures. Implementation of the strategies and control measures consistent with the provisions of this permit constitutes compliance with the assumptions of an approved TMDL, protects water quality in the absence of a TMDL wasteload allocation, ensures compliance by the operator with water quality standards, and satisfies the appropriate water quality requirements of the Clean Water Act and regulations.

#### **4VAC50-60-1120. Effective date of the permit.**

This general permit became effective on July 1, ~~2004~~ 2009. The general permit will expire on June 30, ~~2009~~ 2014.

#### **4VAC50-60-1130. Authorization to discharge.**

A. Any operator governed by this general permit is authorized by this to discharge to surface state waters of the Commonwealth of Virginia upon issuance of coverage under the general permit by the permit issuing authority provided that the operator ~~files~~ has filed a complete and accurate registration statement in accordance with 4VAC50-60-1140, submitted any fees required by 4VAC50-60-700 et seq. (Part XIII), ~~complies~~ complied with the requirements of 4VAC50-60-1150, complied with the requirements of 4VAC50-60-1180 through 4VAC50-60-1190, and ~~provided that:~~

1. The operator shall not have been required to obtain an individual permit according to 4VAC50-60-410 B;
2. The operator shall not be authorized by this general permit to discharge to state waters specifically named in other State Water Control Board regulations or policies that prohibit such discharges;
3. Prior to commencing construction, the operator shall obtain approval of an erosion and sediment control plan from the locality in which the construction activity is to occur or from another appropriate plan-approving authority authorized under the Virginia Erosion and Sediment Control Regulations, 4VAC50-30, unless the operator receives from the locality an "agreement in lieu of a plan" ~~from the locality~~ as defined in 4VAC50-30-10, or is exempt from the requirement to submit an erosion and sediment control plan by ~~4VAC50-30~~ § 10.1-560 of the Code of Virginia;

4. Stormwater discharges ~~which that the permit issuing authority~~ State Water Control Board determines cause, may reasonably be expected to cause, or contribute to a violation of water quality standards (9VAC25-260) are not covered by this permit;

5. The stormwater discharge authorized by this permit may be combined with other sources of stormwater that are not required to be covered under a VSMP permit, so long as the combined discharge is in compliance with this permit. Any discharge authorized by a different VSMP or a VPDES permit may be commingled with discharges authorized by this permit; ~~and~~

6. Discharges to waters for which a "total maximum daily load" (TMDL) wasteload allocation for sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation) has been established by the ~~State Water Control Board and approved by EPA~~ are not eligible for coverage under this permit unless the stormwater pollution prevention plan (SWPPP) developed by the operator incorporates measures and controls that are ~~consistent with the assumptions and requirements of such TMDL. To be~~ are not eligible for coverage under this general permit, ~~the SWPPP must incorporate any conditions applicable to discharges from the construction site that are necessary for consistency with the assumptions and requirements of the TMDL. If a specific wasteload allocation has been established that would apply to discharges from the construction site, the operator must incorporate that allocation into the SWPPP and implement necessary steps to meet that allocation. unless they are addressed in accordance with 4VAC50-60-1170 Section II D 7; and~~

7. Discharges to waters that have been identified as impaired in the 2006 § 305(b)/303(d) Water Quality Assessment Integrated Report are not eligible for coverage under this general permit unless they are addressed in accordance with 4VAC50-60-1170 Section I H.

B. This permit may also be used to authorize stormwater discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) located on-site or off-site provided that:

1. The support activity is directly related to a construction site that is required to have VSMP permit coverage for discharges of stormwater associated with construction activity;
2. The support activity is not a commercial operation serving multiple unrelated construction projects by different operators, and does not operate beyond the completion of the construction activity at the last construction project it supports; and

3. Appropriate ~~controls and~~ control measures are identified in a stormwater pollution prevention plan covering the discharges from the support activity areas.

C. Support activities located off-site are not required to be covered under this general permit. Discharges of stormwater from off-site support activities may be authorized under another VSMP or a VPDES permit. Where stormwater discharges from off-site support activities are not authorized under this general permit, the land area of the off-site support activity need not be included in determining the total land disturbance acreage of the construction activity seeking general permit coverage.

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

~~E. The board may waive the otherwise applicable requirements in this general permit regulation for a stormwater discharge from small construction activity where stormwater controls are not needed based on a "total maximum daily load" (TMDL) established by the board and approved by EPA that addresses the pollutants of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutants of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this section, the pollutants of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. In order to obtain this waiver, prior to the commencement of construction the operator must certify to the board that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by a TMDL, or within the drainage area addressed by an equivalent analysis. The permit issuing authority may allow exceptions to technical criteria contained in the permit in accordance with Part III.~~

**4VAC50-60-1140. Qualifying state, ~~tribal~~ and local programs.**

Qualifying state, ~~tribal~~, or local erosion and sediment control program requirements may be incorporated by reference into the Stormwater Pollution Prevention Plan (SWPPP) required by 4VAC50-60-1170 of this permit. Where a qualifying state, ~~tribal~~, or local program does not include one or more of the elements in this section, then the permittee operator must include those elements as part of the SWPPP required by 4VAC50-60-1170 of this permit. A qualifying state, ~~tribal~~, or

local erosion and sediment control program is one that is approved by the board and includes:

1. Requirements for construction site operators to implement appropriate erosion and sediment control ~~best management practices~~ measures;
2. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality; and
3. Requirements for construction site operators to develop and implement ~~an~~ a SWPPP in accordance with 4VAC50-60-1170 Section II. (An SWPPP includes site descriptions, descriptions of appropriate control measures, copies of approved state, tribal or local requirements, maintenance procedures, inspection procedures, and identification of nonstormwater discharges); and
4. Requirements to submit a site plan for review that ~~incorporates consideration of potential water quality impacts.~~

**4VAC50-60-1150. Permit application (registration statement).**

A. Deadlines for submitting registration statement.

1. Except as provided in subdivision 3 of this subsection, operators must submit a complete and accurate registration statement in accordance with the requirements of this section prior to the issuance of coverage under the general permit that authorizes the commencement of construction land-disturbing activities (i.e., the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities).
2. For stormwater discharges from construction ~~projects~~ activities where the operator changes, ~~including instances where an operator is added after a registration statement has been submitted,~~ the new operator must submit a complete and accurate registration statement or transfer form prior to assuming operational control over site specifications or commencing work on-site.
3. In order to continue permit coverage, operators of ongoing construction activity projects as of July 1, ~~2004~~ 2009, that received authorization to discharge for those projects under the construction stormwater general permit issued in ~~1999~~ 2004 must:
  - a. Submit a complete and accurate registration statement by July 1, ~~2004~~ 2009; and
  - b. Update their stormwater pollution prevention plan to comply with the requirements of this general permit within 30 days after the date of coverage under this general permit.

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4. Effective date of permit coverage. The operator of a construction activity is authorized to discharge stormwater ~~from those construction activities~~ under the terms and conditions of this permit ~~immediately upon submission of a complete and accurate registration statement to~~ only upon issuance of coverage under the general permit by the permit-issuing authority, but in no event earlier than the effective date of this permit, except as noted in subdivision 3 of this subsection. ~~For the purposes of this regulation, a registration statement that is mailed is considered to be submitted once it is postmarked.~~ Operators are not authorized to discharge if the registration statement is incomplete or incorrect, or if the discharge(s) was not eligible for coverage under this permit.

5. Late notifications. Operators are not prohibited from submitting registration statements after initiating clearing, grading, excavation activities, or other ~~construction land-disturbing~~ activities. When a late registration statement is submitted, authorization for discharges ~~occurs no earlier than the submission date of the registration statement~~ shall not occur until coverage under the general permit is issued. The permit-issuing authority reserves the right to take enforcement action for any unpermitted discharges or permit noncompliance that occurs between the commencement of construction and discharge authorization.

B. Registration statement. The operator shall submit a registration statement on the official department form that shall contain the following information:

1. Name, mailing address and telephone number of the construction activity operator. No more than one operator may receive coverage under each registration statement. (NOTE: The permit will be issued to this operator, and the certification in subdivision ~~13~~ 11 of this subsection must be signed by the appropriate person associated with this operator);

2. Name and location of the construction activity, including town, city, or county, and all off-site support activities to be covered under the permit. If a street address is unavailable, provide latitude and longitude;

3. Status of the activity: federal, state, public, or private;

4. Nature of the construction ~~project activity~~ (e.g., commercial, industrial, residential, agricultural, oil and gas, etc.);

5. Name of the receiving water(s) and HUC. Direct discharges to any receiving water identified as impaired on the 2006 § 305(b)/303(d) Water Quality Assessment Integrated Report or for which a TMDL WLA has been established for stormwater discharges from a construction activity shall be noted;

6. If the discharge is through a municipal separate storm sewer system (MS4), the name of the municipal operator of the storm sewer;

7. Estimated project start date and completion date;

8. Total land area of development and estimated area to be disturbed by the construction activity (to the nearest quarter one-tenth of an acre);

9. Whether the area to be disturbed by the construction activity is part of a larger common plan of development or sale;

~~10. A topographic map or other map that clearly shows the location of the construction activity, the area to be disturbed (including off-site support activities), and the receiving stream or streams for the stormwater discharges;~~

NOTE: 10. A stormwater pollution prevention plan (SWPPP) must be prepared in accordance with the requirements of the VSMP General Permit for Stormwater Discharges from Construction Activities prior to submitting this registration statement. By signing this registration statement ~~you are~~ the operator is certifying that the SWPPP has been prepared;

~~11. The location of where the SWPPP may be viewed, and the name and phone number of a contact person (NOTE: The contact person should be a person knowledgeable in the principles and practice of erosion and sediment controls, that is a licensed professional engineer, responsible land disturber (RLD), or other knowledgeable person that (i) holds a certificate of competence from the board in the area of project inspection; or (ii) is enrolled in the board's training program for project inspection or combined administrator and successfully completes such program within one year of enrollment); and~~

~~12. A list of the permanent BMPs (both structural and nonstructural) that will be installed at the construction activity site. For each BMP that will be installed, include the following information:~~

~~a. Type of permanent BMP to be installed;~~

~~b. Geographic location (county state Hydrologic Unit Code);~~

~~e. Waterbody the BMP will discharge into;~~

~~d. Number of acres that will be treated (to the nearest one-tenth acre).~~

~~13.~~ 11. The following certification: "I certify under penalty of law that I have read and understand this registration statement and 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 gathered and evaluate evaluated the information submitted. Based on my inquiry of the person

or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

C. The registration statement shall be signed in accordance with 4VAC50-60-1170, Section III K.

D. Where to submit. The registration statement shall be submitted to the permit-issuing authority.

**4VAC50-60-1160. Termination of permit coverage.**

A. Requirements. The operator ~~of the construction activity~~ may only submit a notice of termination on the official department form after one or more of the following conditions have been met:

1. ~~Final~~ Necessary postconstruction control measures included in the SWPPP for the site are in place and functioning and final stabilization has been achieved on all portions of the site for which the operator is responsible;
2. Another operator has assumed control over all areas of the site that have not been finally stabilized;
3. Coverage under an alternative VPDES or VSMP permit has been obtained; or
4. For residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner.

The notice of termination must be submitted within 30 days of one of the above conditions being met. Authorization to discharge terminates ~~seven days after at midnight on the date that the notice of termination is submitted. For the purposes of this regulation, a notice of termination that is mailed is considered to be submitted once it is postmarked.~~

B. Notice of termination. The notice of termination shall contain the following information:

1. Name, mailing address and telephone number of the construction activity operator.
2. Name and location of the construction activity. If a street address is unavailable, provide latitude and longitude.
3. The VSMP stormwater general permit number.
4. The basis for submission of the notice of termination, including: pursuant to subsection A.
  - ~~a. Final stabilization has been achieved on all portions of the site for which the operator is responsible;~~
  - ~~b. Another operator has assumed control over all areas of the site that have not been finally stabilized;~~

~~e. Coverage under an alternative VPDES or VSMP permit has been obtained; or~~

~~d. For residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner.~~

5. A list of the permanent control measures (both structural and nonstructural) that were installed at the construction activity site. For each control measure that was installed, include the following information:

- a. Type of permanent control measure installed;
- b. Geographic location (county or city and Hydrologic Unit Code);
- c. Waterbody the control measure discharges into; and
- d. Number of acres treated (to the nearest one-tenth of an acre).

~~5. 6.~~ The following certification: "I certify under penalty of law that I have read and understand this notice of termination and 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 gathered~~ and ~~evaluate evaluated~~ the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

C. The notice of termination shall be signed in accordance with 4VAC50-60-1170; Section III K.

D. Where to submit. The notice of termination shall be submitted to the permit-issuing authority.

**4VAC50-60-1170. General permit.**

Any operator whose registration statement is accepted by the permit-issuing authority will receive the following permit and shall comply with the requirements in it and be subject to all requirements of the Virginia Stormwater Management Act (Chapter 6, Article 1.1 (§ 10.1-603.1 et seq.) of Title 10.1 of the Code of Virginia) and the Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60). No more than one operator may receive coverage under each registration statement.

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General Permit No.: ~~DCR04~~ VAR10

Effective Date: July 1, ~~2004~~ 2009

Expiration Date: June 30, ~~2009~~ 2014

## GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES

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

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the Virginia Stormwater Management Act and attendant regulations ~~adopted pursuant to that~~, operators of construction activities covered by this permit (those sites or common plans of development or sale that will result in the disturbance of one or more acres of total land area) with stormwater discharges ~~from these construction activities~~ are authorized to discharge to surface state waters, including discharges to a regulated MS4 system, within the boundaries of the Commonwealth of Virginia, except those specifically named in State Water Control Board and Virginia Soil and Water Conservation Board regulations ~~and policies or permit issuing authority policies and ordinances which that~~ prohibit such discharges.

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

#### SECTION I DISCHARGE AUTHORIZATION AND SPECIAL CONDITIONS

##### A. Coverage under this permit.

1. During the period beginning with the date of coverage under this general permit and lasting until the permit's expiration date, the ~~permittee~~ operator is authorized to discharge stormwater from construction activities.

2. This permit may also authorize stormwater discharges from ~~off-site~~ support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) located on-site or off-site provided that:

- The support activity is directly related to a the construction site that is required to have VSMP permit coverage for discharges of stormwater associated with construction activity;
- The support activity is not a commercial operation serving multiple unrelated construction projects by different operators, and does not operate beyond the

completion of the construction activity at the last construction project it supports; and

c. ~~Appropriate controls and pollution prevention control measures for the discharges from the support activity areas are identified in the a stormwater pollution prevention plan required for the construction activity under Section II D of this permit and implemented to address the discharges from the support activity areas.~~

3. There shall be no discharge of floating solids or visible foam ~~in other than trace amounts that contravenes established standards or interferes directly or indirectly with designated uses of surface waters.~~

##### B. Limitation on coverage.

1. Post-construction discharges. This permit does not authorize stormwater discharges that originate from the site after construction activities have been completed and the site, including any temporary support activity site, has undergone final stabilization. Post-construction industrial stormwater discharges may need to be covered by a separate VPDES permit.

2. Discharges mixed with nonstormwater. This permit does not authorize discharges that are mixed with sources of nonstormwater, other than those discharges that are identified in Section I D 2 (Exceptions to prohibition of nonstormwater discharges) and are in compliance with Section II D 5 (Nonstormwater discharge management).

3. Discharges covered by another permit. This permit does not authorize stormwater discharges associated with construction activity that have been covered under an individual permit or required to obtain coverage under an alternative general permit ~~in accordance with Part Section III X.~~

4. TMDL limitation. Discharges to waters for which a wasteload allocation (WLA) for a pollutant has been established in a "total maximum daily load" (TMDL) allocation for sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation) has been established by the State Water Control Board and approved by EPA by the Commonwealth and approved by the EPA that would apply to stormwater discharges from a construction activity are not eligible for coverage under this permit unless the stormwater pollution prevention plan (SWPPP) developed by the operator ~~incorporates measures and controls that are is~~ consistent with the ~~assumptions and requirements of such TMDL Section II D 7. To be eligible for coverage under this general permit, the SWPPP must incorporate any conditions applicable to discharges from the construction site that are necessary for consistency with the assumptions and requirements of the TMDL. If a specific wasteload allocation has been established that would apply to discharges from the construction site, the operator must~~

~~incorporate that allocation into the SWPPP and implement necessary steps to meet that allocation.~~

5. Impaired waters limitation. Discharges to waters that have been identified as impaired in the 2006 § 305(b)/303(d) Water Quality Assessment Integrated Report are not eligible for coverage under this permit unless the operator implements strategies and control measures consistent with Sections I H and II D 8.

C. Commingled discharges. Any discharge authorized by a different VSMP or VPDES permit may be commingled with discharges authorized by this permit.

D. Prohibition of nonstormwater discharges.

1. Except as provided in Sections I A 2, I C and I D 2, all discharges covered by this permit shall be composed entirely of stormwater associated with construction activity.

2. The following nonstormwater discharges from active construction sites are authorized by this permit provided the nonstormwater component of the discharge is in compliance with Section II D 5 (Nonstormwater discharges):

- a. Discharges from fire fighting activities;
- b. Fire hydrant flushings;
- c. Waters used to wash vehicles where detergents are not used;
- d. Water used to control dust;
- e. Potable water sources, including uncontaminated waterline flushings;
- ~~f. Water used for hydrostatic testing of new pipeline construction;~~
- ~~g. f. Routine external building wash down which does not use detergents;~~
- ~~h. g. Pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used;~~
- ~~i. h. Uncontaminated air conditioning or compressor condensate;~~
- ~~j. i. Uncontaminated ground water or spring water;~~
- ~~k. j. Foundation or footing drains where flows are not contaminated with process materials such as solvents;~~
- ~~l. k. Uncontaminated excavation dewatering, and~~
- ~~m. l. Landscape irrigation.~~

E. Releases of hazardous substances or oil in excess of reportable quantities. The discharge of hazardous substances or oil in the stormwater discharges from the construction site

shall be prevented or minimized in accordance with the stormwater pollution prevention plan for the site. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 110 (2002), 40 CFR Part 117 (2002) and 40 CFR Part 302 (2002) or § 62.1-44.34:19 of the Code of Virginia.

Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110 (2002), 40 CFR Part 117 (2002), ~~or 40 CFR Part 302 (2002),~~ or § 62.1-44.34.19 of the Code of Virginia occurs during a 24-hour period:

- 1. The ~~permittee~~ operator is required to notify the Department of Environmental Quality and the permit-issuing authority in accordance with the requirements of Section III G as soon as he has knowledge of the discharge;
- 2. Where a release enters a municipal separate storm sewer system (MS4), the ~~permittee~~ operator shall also notify the ~~owner~~ operator of the MS4 ~~and the Department of Conservation and Recreation;~~ and
- 3. The stormwater pollution prevention plan required under Section II D of this permit must be reviewed by the operator to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate within seven calendar days of knowledge of a release.

F. Spills. This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

G. Termination of permit coverage. Coverage under this permit may be terminated in accordance with 4VAC50-60-1160.

- ~~1. The operator of the construction activity may only submit a notice of termination after one or more of the following conditions have been met:~~
  - ~~a. Final stabilization has been achieved on all portions of the site for which the operator is responsible;~~
  - ~~b. Another operator has assumed control over all areas of the site that have not been finally stabilized;~~
  - ~~c. Coverage under an alternative VPDES or VSMP permit has been obtained; or~~
  - ~~d. For residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner.~~

~~2. The notice of termination must be submitted within 30 days of one of the conditions in Section I G 1 being met. Authorization to discharge terminates seven days after the notice of termination is submitted.~~

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3. The notice of termination shall be signed in accordance with Section III K of this permit.

## H. Water quality protection.

1. The ~~permittee operator~~ must select, install, implement and maintain ~~best management practices (BMPs) control measures~~ at the construction site that minimize pollutants in the discharge as necessary to meet applicable water quality standards. ~~If there is evidence indicating that the stormwater discharges authorized by this permit are causing, have the reasonable potential to cause, or are contributing to an excursion above an applicable water quality standard, or are causing downstream pollution (as defined in this part), the permit issuing authority may take appropriate enforcement action, may require the permittee to include and implement appropriate controls in the SWPPP to correct the problem, and/or may require the permittee to obtain an individual permit in accordance with 4VAC50-60-410 B 3. In general, except in situations explained in subdivision 2 of this subsection, the stormwater control measures developed, implemented, and updated consistent with Section II shall be considered as stringent as necessary to ensure that the operator's discharges do not cause or contribute to an excursion above any applicable water quality standard.~~

2. If it is determined at any time that the operator's stormwater discharges have reasonable potential to cause or contribute to an excursion above any applicable water quality standard, the permit-issuing authority shall require the operator to:

a. Modify control measures in accordance with Section II C to adequately address the identified water quality concerns;

b. Submit valid and verifiable data and information that are representative of ambient conditions and indicate that the receiving water is attaining water quality standards; or

c. Cease discharges of pollutants from construction activity and submit an individual permit application according to 4VAC50-60-410 B 3.

All written responses required under this part must include a signed certification consistent with Section III K.

## SECTION II

### STORMWATER POLLUTION PREVENTION PLAN

#### A. Stormwater Pollution Prevention Plan Framework.

1. A stormwater pollution prevention plan (SWPPP) shall be developed prior to submission of a registration statement and implemented for the construction activity covered by this permit. SWPPPs shall be prepared in accordance with good engineering practices.

2. The SWPPP shall:

~~identify~~ a. Identify potential sources of ~~pollution which pollutants that~~ may reasonably be expected to affect the quality of stormwater discharges from the construction site;:

~~In addition, the SWPPP shall describe and ensure the implementation of practices which~~ b. Describe control measures that will be used to ~~reduce~~ minimize pollutants in stormwater discharges from the construction site;:

~~to assure compliance~~ c. Comply with the terms and conditions of this permit.

3. The SWPPP requirements of this general permit may be fulfilled by incorporating by reference other state, ~~tribal~~ or local plans such as (i) an erosion and sediment control (ESC) plan, (ii) an agreement in lieu of a plan as defined in 4VAC50-30-10, (iii) a stormwater management plan, (iv) a spill prevention control and countermeasure (SPCC) plan developed for the site under § 311 of the federal Clean Water Act or (v) best management practices (BMP) programs otherwise required for the facility provided that the incorporated plan meets or exceeds the SWPPP requirements of Section II D. If an erosion and sediment control plan for the ~~construction~~ land-disturbing activity is being incorporated by reference, the referenced plan must be approved by the locality in which the construction activity is to occur or by another appropriate plan-approving authority authorized under the Virginia Erosion and Sediment Control Regulations (4VAC50-30) prior to the commencement of ~~construction~~ land disturbance.

4. All plans incorporated by reference into the SWPPP become enforceable under this permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP of Section II D, the ~~permittee operator~~ must develop the missing elements and include them in the required SWPPP.

5. Once a definable area has been finally stabilized, the operator may mark this on the SWPPP and no further SWPPP or inspection requirements apply to that portion of the site (e.g., earth-disturbing activities around one of three buildings in a complex are done and the area is finally stabilized; one mile of a roadway or pipeline project is done and finally stabilized, etc.).

6. The SWPPP shall identify all properties that are no longer under the control of the operator and the dates on which the operator no longer had control over each property.

7. The operator must implement the SWPPP as written and updated in accordance with Section II C from commencement of construction activity until final stabilization is complete.

#### A. Deadlines for SWPPP preparation and compliance.

1. ~~The SWPPP shall be prepared prior to submittal of the registration statement and provide for compliance with the terms and schedule of the plan beginning with the initiation of construction activities.~~

2. ~~For ongoing construction activity involving a change of operator, the new operator shall accept and maintain the existing SWPPP, or prepare and implement a new SWPPP prior to taking over operations at the site.~~

B. Signature, ~~plan~~ SWPPP review and making ~~plans~~ SWPPPs available.

1. The SWPPP shall be signed in accordance with Section III K.

2. The SWPPP shall be retained, along with a copy of this permit, registration statement, and acknowledgement letter from the permit-issuing authority, at the construction site or other location easily accessible during normal business hours from the date of commencement of construction activity to the date of final stabilization. ~~Permittees~~ Operators with day-to-day ~~operation~~ operational control over SWPPP implementation shall have a copy of the ~~plan~~ SWPPP available at a central location on-site for the use of all operators and those identified as having responsibilities under the ~~plan~~ SWPPP whenever they are on the construction site. The SWPPP must be made available, in its entirety, to the department ~~and~~, the permit-issuing authority, and the operator of a municipal separate storm sewer system receiving discharges from the site for review at the time of an on-site inspection. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the SWPPP's location must be posted near the main entrance at the construction site.

3. The ~~permittee~~ operator shall make SWPPPs available upon request to the department; the permit-issuing authority; a state or local agency approving erosion and sediment control plans, grading plans, or stormwater management plans; local government officials; or the operator of a municipal separate storm sewer system receiving discharges from the site.

4. A sign or other notice must be posted conspicuously near the main entrance of the construction site. The sign or other notice must contain the following information:

a. A copy of the permit coverage letter that includes the registration number for the construction activity; and

b. If the location of the SWPPP or the name and telephone number of the contact person for scheduling SWPPP viewing times has changed (i.e., is different than that submitted to the permit issuing authority in the registration statement), the current location of the SWPPP and name and telephone number of a contact person for scheduling viewing times.

For linear projects, the sign or other notice must be posted at a publicly accessible location near the active part of the construction project (e.g., where a pipeline project crosses a public road).

5. The operator shall make the SWPPP available to the public for review upon request. Access to the SWPPP may be arranged at a time and at a publicly accessible location convenient to the operator or his designee but shall be no less than twice per month and shall be during normal business hours. Information shall not be required to be released if it is excluded from disclosure under applicable law.

C. Maintaining an updated SWPPP.

1. The ~~permittee~~ operator shall amend the SWPPP whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to ~~surface~~ state waters and that has not been previously addressed in the SWPPP.

2. The SWPPP must be amended if during inspections or investigations by ~~site staff~~ the operator's qualified personnel, or by local, state or federal officials, it is determined that the ~~discharges are causing water quality exceedances, or the SWPPP is~~ existing control measures are ineffective in eliminating or significantly minimizing pollutants in stormwater discharges from the construction site. Revisions to the SWPPP shall include additional or modified control measures designed to correct problems identified. If approval by a plan-approving authority is necessary for the control measure, revisions to the SWPPP shall be completed within seven calendar days of approval. Implementation of these additional or modified control measures must be accomplished as described in Section II D 3 b.

3. ~~Based on the results of an inspection, the SWPPP must be modified as necessary to include additional or modified BMPs designed to correct problems identified. Revisions to the SWPPP must be completed within seven calendar days following the inspection. Implementation of these additional or modified BMPs must be accomplished as described in Section II D 3 b. Revisions to the SWPPP must be dated and signed in accordance with Section III K 2.~~

4. The SWPPP must clearly identify ~~for each measure identified in the plan, the contractor(s) or subcontractor(s) that will implement the~~ and maintain each measure identified in the SWPPP. The SWPPP shall be ~~amended~~ revised to identify any new contractor that will implement a measure ~~of the plan~~.

D. Stormwater pollution prevention plan contents. The SWPPP shall include the registration statement, this permit, and the following items:

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# Regulations

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1. Site and activity description. Each SWPPP shall provide the following information:

a. A narrative description of the nature of the construction activity, including the function of the project (e.g., low density residential, shopping mall, highway, etc.);

b. The intended sequence and timing of activities that disturb soils at the site (e.g., grubbing, excavation, grading, utilities and infrastructure installation);

c. A record of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated;

~~e.~~ d. Estimates of the total area expected to be disturbed by excavation, grading, or other construction activities including off-site borrow and fill areas;

~~d.~~ e. A description of any other potential ~~pollution~~ pollutant sources, such as vehicle fueling, storage of fertilizers or chemicals, sanitary waste facilities, etc.;

~~e.~~ f. Identification of the nearest receiving waters at or near the construction site that will receive discharges from disturbed areas of the project;

~~f.~~ g. The location and description ~~on~~ of any discharge associated with industrial activity other than construction at the site. This includes stormwater discharges from dedicated asphalt plants and dedicated concrete plants that are covered by this permit;

h. A legible general location map (e.g., USGS quadrangle map, a portion of a city or county map, or other map) with sufficient detail to identify the location of the construction activity and surface waters within one mile of the construction activity; and

~~g.~~ i. A legible site map ~~indicating~~ identifying:

(1) Directions of stormwater flow and approximate slopes anticipated after major grading activities;

(2) Areas of soil disturbance and areas of the site which will not be disturbed;

(3) Locations of major structural and nonstructural ~~controls~~ control measures identified in the SWPPP, including those that will be permanent ~~controls that will remain~~ after construction activities have been completed;

(4) Locations where stabilization practices are expected to occur;

(5) ~~Surface water bodies (including wetlands)~~ Locations of surface waters;

(6) Locations where concentrated stormwater discharges to a surface water;

(7) Locations of off-site material, waste, borrow or equipment storage areas covered by the ~~plan~~ SWPPP;

(8) Locations of other potential ~~pollution~~ pollutant sources, such as vehicle fueling, storage of chemicals, concrete wash-out areas, sanitary waste facilities, including those temporarily placed on the construction site, etc.; and

(9) Areas where final stabilization has been accomplished ~~and no further construction phase permit requirements apply.~~

2. Controls to ~~reduce~~ minimize pollutants. The SWPPP shall include a description of all ~~pollution~~ control measures that will be implemented as part of the construction activity to ~~control~~ minimize pollutants in stormwater discharges. For each major activity identified in the project description, the SWPPP shall clearly describe appropriate control measures, the general sequencing during the construction process in which the control measures will be implemented, and which operator is responsible for the control measure's implementation.

a. Erosion and sediment controls.

~~(1) Stabilization practices. The SWPPP shall include a description of interim and permanent stabilization practices for the site. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized. Stabilization practices may include, but are not limited to: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, riprap, gabions, facines, biologs and other appropriate measures. Use of impervious surfaces for stabilization should be avoided.~~

~~(a) A record of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated shall be maintained and included in the SWPPP.~~

~~(b) Except as provided in Section II-D-2 a (1) (c), (d) and (e), stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than seven days after the construction activity in that portion of the site has temporarily or permanently ceased.~~

~~(c) Where the initiation of stabilization measures by the seventh day after construction activity temporary or permanently ceased is precluded by snow cover or frozen ground conditions, stabilization measures shall be initiated as soon as practicable.~~

~~(d) Where construction activity on a portion of the site is temporarily ceased, and earth disturbing activities will be~~

~~resumed within 30 days, temporary stabilization measures do not have to be initiated on that portion of the site.~~

~~(e) In drought stricken areas where initiating perennial vegetative stabilization measures is not possible within seven days after construction activity has temporarily or permanently ceased, final vegetative stabilization measures shall be initiated as soon as practicable.~~

~~(2) Structural practices. The SWPPP shall include a description of structural practices to divert flows from exposed soils, retain/detain flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site. Such practices may include, but are not limited to: silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural practices should be located on upland soils to the degree attainable. The department and the permit-issuing authority encourages the use of a combination of erosion and sediment control measures in order to achieve maximum pollutant removal.~~

~~(a) Sediment basins: For common drainage locations that serve an area with three or more acres disturbed at one time, a temporary (or permanent) sediment basin providing 3,618 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. The 3,618 cubic feet of storage area per acre drained does not apply to flows from off-site areas and flows from on-site areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin. In determining whether installing a sediment basin is attainable, the permittee may consider factors such as site soils, slope, available area on site, etc. In any event, the permittee must consider public safety, especially as it relates to children, as a design factor for the sediment basin and alternative sediment controls shall be used where site limitations would preclude a safe design.~~

~~(b) For drainage locations that serve three or more acres at one time and where a temporary sediment basin or equivalent controls is not attainable, smaller sediment basins and/or sediment traps should be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries, and for those side slope boundaries deemed appropriate as dictated by individual site conditions.~~

~~(c) For drainage locations serving less than three acres, smaller sediment basins or sediment traps or both should be used. At a minimum, silt fences, vegetative buffer~~

~~strips or equivalent sediment controls are required for all downslope boundaries, and for those side slope boundaries deemed appropriate as dictated by individual site conditions, of the construction area unless a sediment basin providing storage for 3,618 cubic feet of storage per acre drained is provided.~~

~~(1) An erosion and sediment control plan or an agreement in lieu of a plan shall be approved by the appropriate plan-approving authority for the land-disturbing activity in accordance with the Virginia Erosion and Sediment Control Law (§ 10.1-560 et seq.) and regulations (4VAC50-30). Where applicable, a plan shall be developed in accordance with board-approved annual general erosion and sediment control specifications.~~

~~(2) All control measures required by the plan shall be designed, installed, and maintained in accordance with good engineering practices and the minimum standards of the Virginia Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) and regulations (4VAC50-30).~~

~~b. Management practices.~~

~~(1) Site plans should ensure that existing vegetation is preserved where possible and that disturbed portions of the site are stabilized.~~

~~(2) All control measures must be properly selected, installed, and maintained in accordance with good engineering practices and, where applicable, manufacturer specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the permittee operator must replace or modify the control for site situations as soon as practicable and update the SWPPP in accordance with Section II C.~~

~~(2)(3) If sediment escapes the construction site, off-site accumulations of sediment must be removed at a frequency sufficient as soon as practicable to minimize off-site impacts. If approval by a plan-approving authority is necessary, control measures shall be implemented to minimize pollutants in stormwater discharges until such approvals can be obtained.~~

~~(3) Litter, construction (4) Construction debris, and construction chemicals exposed to stormwater shall be prevented from becoming a pollutant source in stormwater discharges.~~

~~(5) Litter exposed to stormwater shall be prevented from becoming a pollutant source in stormwater discharges and the construction site shall be policed daily to control litter.~~

~~c. Stormwater management.~~

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# Regulations

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(1) The operator shall ensure compliance with the requirements of 4VAC50-60-1180 through 4VAC50-60-1190 of the Virginia Stormwater Management Regulations, including but not limited to water quality and quantity requirements. The SWPPP shall include a description of, and all necessary calculations supporting, all post-construction stormwater management measures that will be installed during the construction process to control pollutants in stormwater discharges after construction operations have been completed. Structural measures should be placed on upland soils to the degree attainable possible. Such measures must be designed and installed in accordance with applicable local and/or, state, and federal requirements, and any necessary permits must be obtained.

(2) Such measures may include, but are not limited to: stormwater detention structures (including dry ponds); stormwater retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff on site; stormwater wetlands; sand filters; bioretention systems; water quality structures; and sequential systems (which combine several practices). The SWPPP shall include an explanation of the technical basis used to select the practices to control pollution and flows that exceed predevelopment levels. Control measures contained in Part II of the Virginia Stormwater Management Regulations, 4VAC50-60-1184, or on the Virginia BMP Clearinghouse may be utilized. Innovative or alternate control measures may be allowed by the department provided such measures effectively address water quality and quantity in accordance with the requirements of 4VAC50-60-1180 through 4VAC50-60-1190 and are not restricted by the locality.

(3) Outflows from a stormwater management facility or stormwater conveyance system shall be discharged to an adequate channel as defined in the Virginia Erosion and Sediment Control Regulations (4VAC50-30). In addition, the natural, physical, chemical, and biological characteristics and functions of the receiving waters must be maintained and protected (e.g., no significant changes in the hydrological regime of the receiving water) all control measures shall be employed in a manner that minimizes impacts on the physical, chemical and biological integrity of rivers, streams, and other state waters, is protective of water quality standards, and is consistent with Section II D 6 through D 8 and other applicable provisions of this permit.

d. Other controls.

(1) The SWPPP shall describe measures to prevent the discharge of solid materials, including building materials, garbage, and debris to surface state waters of the state, except as authorized by a Clean Water Act § 404 permit.

~~(2) Where construction vehicle access routes intersect paved public roads, provisions shall be made to minimize the transport of sediment by vehicular tracking onto the paved surface. Where sediment is transported onto a public road surface, the road shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner.~~

~~(3)(2) The SWPPP shall ensure and demonstrate compliance~~ describe control measures used to comply with applicable state or local waste disposal, sanitary sewer or septic system regulations.

~~(4)(3) The SWPPP shall include a description of construction and waste materials expected to be stored on-site with updates as appropriate. The plan SWPPP shall also include a description of controls to reduce pollutants from these materials, including storage practices, to minimize exposure of the materials to stormwater, and for spill prevention and response.~~

~~(5)(4) The SWPPP shall include a description of pollutant sources from off-site areas other than construction (including stormwater discharges from dedicated asphalt plants and dedicated concrete plants), and a description of controls and control measures that will be implemented at those sites to minimize pollutant discharges.~~

e. Applicable state or local programs. The SWPPP control measures implemented at the site shall be consistent with all applicable federal, state, or local requirements for erosion and sediment control and stormwater management including updates to the . The SWPPP shall be updated as necessary to reflect any revisions to applicable federal, state or local requirements for erosion and sediment control and stormwater management that affect the control measures implemented at the site.

### 3. Maintenance of controls.

a. The SWPPP must include a description and schedule of procedures to maintain in good and effective operating conditions vegetation, erosion and sediment control measures and other protective measures during construction identified in the site plan. All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If site inspections required by Section II D 4 identify BMPs control measures that are not operating effectively, maintenance shall be performed before the next anticipated storm event, or as soon as practicable to maintain the continued effectiveness of stormwater controls.

b. If site inspections required by Section II D 4 identify existing BMPs control measures that need to be modified or if additional BMPs control measures are necessary for any reason, implementation shall be completed before the next anticipated storm event. If implementation before the next anticipated storm event is impracticable, the situation shall be documented in the SWPPP and alternative BMPs control measures shall be implemented as soon as practicable.

4. Inspections. ~~Inspections by qualified personnel must be conducted of all areas of the site disturbed by construction activity, and areas used for storage of materials that are exposed to stormwater. "Qualified personnel" means a licensed professional engineer, responsible land disturber (RLD), or other knowledgeable person that (i) holds a certificate of competence from the board in the area of project inspection; or (ii) is enrolled in the board's training program for project inspection or combined administrator and successfully completes such program within one year of enrollment. The name and phone number of qualified personnel conducting inspections shall be included in the SWPPP.~~

a. Inspections shall be conducted (i) at least every seven calendar days or (ii) at least once every 14 calendar days and within 48 hours of the end of following any runoff producing storm event. Where areas have been finally or temporarily stabilized or runoff is unlikely due to winter conditions (e.g., the site is covered with snow or ice, or frozen ground exists) such inspections shall be conducted at least once every month.

b. Inspections must include all areas of the site disturbed by construction activity, off-site areas, and areas used for storage of materials that are exposed to precipitation. Inspectors must look for evidence of, or the potential for, pollutants entering the a stormwater conveyance system. Erosion and sediment control Control measures identified in the SWPPP shall be observed to ensure inspected for proper installation, maintenance, and operation. Discharge locations, where accessible, shall be inspected to ascertain whether ~~erosion and sediment control~~ measures are effective in ~~preventing significant~~ minimizing impacts to receiving waters. Where discharge locations are inaccessible, nearby downstream locations shall be inspected to the extent that such inspections are practicable. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking.

c. Utility line installation, pipeline construction, and other examples of long, narrow, linear construction activities may limit the access of inspection personnel to the areas described in Section II D 4 b. Inspection of these areas could require that vehicles compromise temporarily or even permanently stabilized areas, cause

additional disturbance of soils, and increase the potential for erosion. In these circumstances, controls must be inspected on the same frequencies as other construction projects, but representative inspections may be performed. For representative inspections, personnel must inspect controls along the construction site for 0.25 miles above and below each access point where a roadway, undisturbed right-of-way, or other similar feature intersects the construction site and allows access to the areas described above. The conditions of the controls along each inspected 0.25-mile segment may be considered as representative of the condition of controls along that reach extending from the end of the 0.25-mile segment to either the end of the next 0.25-mile segment, or to the end of the project, whichever occurs first. Inspection locations must be listed in the report required by Section II D 4 e.

~~d. Based on the results of the inspection, the site and activity description identified in the plan in accordance with Section II D 1 of this permit and pollution prevention measures identified in the SWPPP in accordance with Section II D 2 of this permit shall be revised as appropriate within seven calendar days following the inspection.~~

e. d. A report summarizing the scope of the inspection, names and qualifications of personnel making the inspection, the dates of the inspection, major observations relating to the implementation of the SWPPP, and actions taken in accordance with Section II D 4 d of the permit shall be made and retained as part of the SWPPP in accordance with Section III B of this permit. Major observations should include:

- (1) The location(s) of discharges of sediment or other pollutants from the site;
- (2) Location(s) of BMPs control measures that need to be maintained;
- (3) Location(s) of BMPs control measures that failed to operate as designed or proved inadequate for a particular location;
- (4) Location(s) where additional BMPs control measures are needed that did not exist at the time of inspection; ~~and~~
- (5) Corrective action required including any changes to the SWPPP that are necessary and implementation dates; ~~;~~
- (6) The amount of rainfall at the construction site (in inches) from the runoff producing storm event requiring the inspection, or if inspecting on a seven-day schedule, the amount of rainfall (in inches) since the previous inspection; and
- (7) Weather information and a description of any discharges occurring at the time of inspection.

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# Regulations

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A record of each inspection and of any actions taken in accordance with Section II must be retained by the operator as part of the SWPPP for at least three years from the date that permit coverage expires or is terminated. The inspection reports shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the stormwater pollution prevention plan SWPPP and this permit. The report shall be signed in accordance with Section III K of this permit.

5. Nonstormwater discharge management. The SWPPP shall identify all allowable sources of nonstormwater discharges listed in Section I D 2 of this permit that are combined with stormwater discharges from the construction activity at the site, except for flows from fire fighting activities. The SWPPP shall identify and ~~ensure~~ require the implementation of appropriate ~~pollution prevention control~~ pollution control measures for the nonstormwater components of the discharge.

6. Endangered species. The SWPPP shall include, if applicable, the following documentation with regard to endangered species:

a. Any correspondence for any stage of project planning between the U.S. Fish and Wildlife Service (FWS), EPA, the U.S. National Marine Fisheries Service (NMFS), or others and the operator regarding listed species and critical habitat; and

b. A description of measures that were determined necessary to protect federally listed endangered or threatened species, or federally designated critical habitat.

7. Total maximum daily loads. A total maximum daily load (TMDL) approved by the State Water Control Board may include a wasteload allocation to the regulated construction activity that identifies the pollutant for which stormwater controls are necessary for the surface waters to meet water quality standards. The pollutant identified in a wasteload allocation as of the effective date of this permit must be specified in the SWPPP and addressed through the use of strategies and control measures as specified in the SWPPP. Implementation of the strategies and control measures consistent with the provisions of this permit constitutes compliance with the assumptions and requirements of the approved TMDL. A wasteload allocation does not establish that the operator is in or out of compliance with the conditions of this permit.

The SWPPP shall include strategies and control measures to ensure consistency with the assumptions and requirements of the TMDL WLA; or shall be updated within 30 days of the effective date of any reopening of this permit to include wasteloads allocated to the

construction activity after issuance of permit coverage and shall implement such strategies and control measures.

8. Impaired waters. The control measures shall be protective of water quality standards for impaired waters identified as having impairments for pollutants that may be discharged from the construction activity in the 2006 § 305(b)/303(d) Water Quality Assessment Integrated Report in accordance with Section I H.

## SECTION III

### CONDITIONS APPLICABLE TO ALL VSMP PERMITS

NOTE: ~~Monitoring~~ Discharge monitoring is not required for this permit. If ~~you choose~~ the operator chooses to monitor ~~your~~ stormwater discharges or ~~BMPs control measures~~, ~~you~~ the operator must comply with the requirements of subsections A, B, and C, as appropriate.

#### A. Monitoring.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitoring activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 (2001) or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The ~~permittee operator~~ shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

#### B. Records.

1. ~~Records of monitoring information~~ Monitoring records and reports shall include:

- The date, exact place, and time of sampling or measurements;
- The individual(s) who performed the sampling or measurements;
- The date(s) and time(s) analyses were performed;
- The individual(s) who performed the analyses;
- The analytical techniques or methods used; and
- The results of such analyses.

2. The ~~permittee operator~~ shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period

of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee operator, or as requested by the board.

C. Reporting monitoring results.

1. The permittee operator shall ~~submit~~ update the SWPPP to include the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place as may be performed in accordance with this permit, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the permit issuing authority.

2. Monitoring results shall be reported on a discharge monitoring report (DMR) or on forms provided, approved or specified by the department; or in any format provided that the date, location, parameter, method, and result of the monitoring activity are included.

3. If the permittee operator monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 (2001) or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee operator shall furnish to the ~~permit issuing authority~~, within a reasonable time, any information which the board, department, or other permit-issuing authority may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The board, department, or other permit-issuing authority may require the permittee operator to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the CWA and the Virginia Stormwater Management Act. The permittee operator shall also furnish to the board, department, or other permit-issuing authority, upon request, copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized stormwater discharges. ~~Except in compliance with this permit or another permit issued by the permit issuing authority or the Department of Environmental Quality, it shall be unlawful for any person to: Pursuant to § 10.1-603.2:2 A of the Code of Virginia, except in compliance with a permit issued by the permit-issuing authority, it shall be unlawful to cause a stormwater discharge from a construction activity.~~

1. ~~Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or~~

2. ~~Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.~~

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

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department, the Department of Environmental Quality, and the permit-issuing authority

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# Regulations

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under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a "bypass" or "upset", as defined herein, should occur from a facility and the discharge enters or could be expected to enter state waters, the permittee operator shall promptly notify, in no case later than within 24 hours, the department, the Department of Environmental Quality, and the permit-issuing authority by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee operator shall reduce the report to writing and shall submit it to the department, the Department of Environmental Quality, and the permit-issuing authority within five days of discovery of the discharge in accordance with Section III I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service of some or all of the facilities; and
4. Flooding or other acts of nature.

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

1. An oral report to the department, the Department of Environmental Quality, and the permit-issuing authority shall be provided within 24 hours from the time the permittee operator becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this subdivision:

- a. Any unanticipated bypass; and
  - b. Any upset that causes a discharge to surface state waters.
2. A written report shall be submitted within five days and shall contain:
- a. A description of the noncompliance and its cause;
  - b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
  - c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The permit-issuing authority may waive the written report on a case-by-case basis for reports of

noncompliance under Section III I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee operator shall report all instances of noncompliance not reported under Section III I 1 or 2 in writing ~~at the time the next monitoring reports are submitted as part of the SWPPP~~. The reports shall contain the information listed in Section III I 2.

NOTE: The ~~immediate (within 24 hours)~~ reports required in Section III G, H and I ~~may~~ shall be made to the department's ~~Urban Program's~~ Stormwater Program Section of the Division of Soil and Water Conservation, appropriate Department of Environmental Quality's Regional Office Pollution Response Program, and the permit-issuing authority. Reports may be made by telephone or by fax. For reports outside normal working hours, leaving a recorded message shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

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

J. Notice of planned changes.

1. The permittee operator shall give notice to the permit-issuing authority as soon as possible of any planned physical alterations or additions to the permitted facility or activity. Notice is required only when:

a. The permittee operator plans an alteration or addition to any building, structure, facility, or installation ~~from which there is or may be a discharge of pollutants, the construction of which commenced that may meet one of the criteria for determining whether a facility is a new source in 4VAC50-60-420;~~

(1) ~~After promulgation of standards of performance under § 306 of the federal Clean Water Act that are applicable to such source; or~~

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

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

2. The permittee operator shall give advance notice to the permit-issuing authority of any planned changes in the permitted facility or activity ~~that, which~~ may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this ~~section part~~, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation; or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term ~~environmental~~ compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this ~~section part~~, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits, including SWPPPs, and other information requested by the board, the department, or the permit-issuing authority shall be signed by a person described in Section III K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Section III K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or

an individual or position having overall responsibility for environmental matters for the ~~company~~ operator. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

c. The signed and dated written authorization is ~~submitted to the department~~ included in the SWPPP. A copy must be provided to the permit-issuing authority, if requested.

3. Changes to authorization. If an authorization under Section III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the ~~facility~~ construction activity, a new authorization satisfying the requirements of Section III K 2 shall be submitted to the permit-issuing authority prior to or together with any reports or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Section III K 1 or 2 shall make the following certification:

"I certify under penalty of law that I have read and understand this document and 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~~ gathered and ~~evaluate~~ evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee operator shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Virginia Stormwater Management Act and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the Virginia Stormwater Management Act but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee operator shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee operator wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee operator shall

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submit a new registration statement at least 90 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee operator from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Section III U),<sup>7</sup> and "upset" (Section III V),<sub>2</sub> nothing in this permit shall be construed to relieve the permittee operator from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee operator from any responsibilities, liabilities, or penalties to which the permittee operator is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law or § 311 of the Clean Water Act.

Q. Proper operation and maintenance. The permittee operator shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) ~~that, which~~ are installed or used by the permittee operator to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems ~~that, which~~ are installed by the permittee operator only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee operator shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a ~~permittee an operator~~ in an enforcement action that it would have been necessary to halt or reduce the

permitted activity in order to maintain compliance with the conditions of this permit.

## U. Bypass.

1. "Bypass", as defined in 4VAC50-60-10, means the intentional diversion of waste streams from any portion of a treatment facility. The permittee operator may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Section III U 2 and 3.

## 2. Notice.

a. Anticipated bypass. If the permittee operator knows in advance of the need for a bypass, prior notice shall be submitted to the department, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee operator shall submit notice of an unanticipated bypass as required in Section III I.

## 3. Prohibition of bypass.

a. ~~Bypass~~ Except as provided in Section III U 1, bypass is prohibited, and the permit-issuing authority may take enforcement action against ~~a permittee an operator~~ for bypass unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage. Severe property damage means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

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

b. The permit-issuing authority may approve an anticipated bypass, after considering its adverse effects, if the permit-issuing authority determines that it will meet the three conditions listed in Section III U 3 a.

## V. Upset.

1. An upset, as defined in 4VAC50-60-10, constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Section III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

2. A permittee 3. An operator who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that:

- a. An upset occurred and that the permittee operator can identify the cause(s) of the upset;
- b. The permitted facility was at the time being properly operated;
- c. The permittee operator submitted notice of the upset as required in Section III I; and
- d. The permittee operator complied with any remedial measures required under Section III S.

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

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

1. Enter upon the permittee's operator's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect and photograph at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
4. Sample or monitor at reasonable times, for the purposes of ensuring permit compliance or as otherwise authorized by the Clean Water Act and the Virginia Stormwater

Management Act, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee operator for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the permit-issuing authority. Except as provided in Section III Y 2, a permit may be transferred by the permittee operator to a new ~~owner~~ or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee operator and incorporate such other requirements as may be necessary under the Virginia Stormwater Management Act and the Clean Water Act.

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

- a. The current permittee operator notifies the permit-issuing authority at least 30 days in advance of the proposed transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new permittees operators containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The permit-issuing authority does not notify the existing permittee operator and the proposed new permittee operator of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Section III Y 2 b.

3. For ongoing construction activity involving a change of operator, the new operator shall accept and maintain the existing SWPPP, or prepare and implement a new SWPPP prior to taking over operations at the site.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

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## **4VAC50-60-1180. [Reserved] Applicability.**

4VAC50-60-1180 through 4VAC50-60-1190 specify technical criteria for every regulated land-disturbing activity.

## **4VAC50-60-1182. General.**

A. Determination of flooding and channel erosion impacts to receiving streams due to land-disturbing activities shall be measured at each point of discharge from the land disturbance and such determination shall include any runoff from the balance of the watershed that also contributes to that point of discharge.

B. The specified design storms shall be defined as either a 24-hour storm using the rainfall distribution recommended by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) when using NRCS methods or as the storm of critical duration that produces the greatest required storage volume at the site when using a design method such as the Modified Rational Method.

C. For purposes of computing runoff, all pervious lands in the site shall be assumed prior to development to be in good condition (if the lands are pastures, lawns, or parks), with good cover (if the lands are woods), or with conservation treatment (if the lands are cultivated); regardless of conditions existing at the time of computation.

D. Construction of stormwater management facilities or modifications to channels shall comply with all applicable laws and regulations. Evidence of approval of all necessary permits shall be presented.

E. Impounding structures that are not covered by the Impounding Structure Regulations (4VAC50-20) shall be engineered for structural integrity during the 100-year storm event.

F. Predevelopment and postdevelopment runoff rates shall be verified by calculations that are consistent with good engineering practices.

G. Outflows from a stormwater management facility or stormwater conveyance system, shall be discharged to an adequate channel.

H. Proposed residential, commercial, or industrial subdivisions shall apply these stormwater management criteria to the land disturbance as a whole. Individual lots in new subdivisions shall not be considered separate land-disturbing activities, but rather the entire subdivision shall be considered a single land development project. Hydrologic parameters shall reflect the ultimate land disturbance and shall be used in all engineering calculations.

I. All stormwater management facilities shall have an inspection and maintenance plan that identifies the owner and the responsible party for carrying out the inspection and maintenance plan.

J. Construction of stormwater management impoundment structures within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain shall be avoided to the extent possible. When this is unavoidable, all stormwater management facility construction shall be in compliance with all applicable regulations under the National Flood Insurance Program, 44 CFR Part 59.

K. Natural channel characteristics shall be preserved to the maximum extent practicable.

L. Land-disturbing activities shall comply with the Virginia Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) and attendant regulations.

M. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in Resource Protection Areas defined in the Chesapeake Bay Preservation Act, provided that (i) the local government has conclusively established that the location of the facility within the Resource Protection Area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both; and (iii) the facility must be consistent with a stormwater management program that has been approved by the board.

## **4VAC50-60-1184. Water quality.**

A. Compliance with the water quality criteria may be achieved by applying the performance-based criteria or the technology-based criteria to either the site or a planning area.

B. Performance-based criteria. For land-disturbing activities, the calculated postdevelopment nonpoint source pollutant runoff load shall be compared to the calculated predevelopment load based upon the average land cover condition or the existing site condition. A BMP shall be located, designed, and maintained to achieve the target pollutant removal efficiencies specified in Table 1 of this section to effectively reduce the pollutant load to the required level based upon the following four applicable land development situations for which the performance criteria apply:

1. Situation 1 consists of land-disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover that is less than the average land cover condition.

Requirement: No reduction in the after disturbance pollutant discharge is required.

2. Situation 2 consists of land-disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover that is greater than the average land cover condition.

Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the average land cover condition.

3. Situation 3 consists of land-disturbing activities where the existing percent impervious cover is greater than the average land cover condition.

Requirement: The pollutant discharge after disturbance shall not exceed (i) the pollutant discharge based on existing conditions less 10% or (ii) the pollutant discharge based on the average land cover condition, whichever is greater.

4. Situation 4 consists of land-disturbing activities where the existing percent impervious cover is served by an existing stormwater management BMP that addresses water quality.

Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the existing percent impervious cover while served by the existing BMP. The existing BMP shall be shown to have been designed and constructed in accordance with proper design standards and specifications, and to be in proper functioning condition.

C. Technology-based criteria. For land-disturbing activities, the postdeveloped stormwater runoff from the impervious cover shall be treated by an appropriate BMP as required by the postdeveloped condition percent impervious cover as specified in Table 1 of this section. The selected BMP shall be located, designed, and maintained to perform at the target pollutant removal efficiency specified in Table 1. Design standards and specifications for the BMPs in Table 1 that meet the required target pollutant removal efficiency will be available at the department.

Table 1\*

<u>Water Quality BMP*</u>	<u>Target Phosphorus Removal Efficiency</u>	<u>Percent Impervious Cover</u>
<u>Vegetated filter strip</u>	<u>10%</u>	<u>16-21%</u>
<u>Grassed Swale</u>	<u>15%</u>	
<u>Constructed wetlands</u>	<u>20%</u>	<u>22-37%</u>
<u>Extended detention (2 x WQ Vol)</u>	<u>35%</u>	
<u>Retention basin I (3 x WQ Vol)</u>	<u>40%</u>	
<u>Bioretention basin</u>	<u>50%</u>	<u>38-66%</u>
<u>Bioretention filter</u>	<u>50%</u>	
<u>Extended detention-enhanced</u>	<u>50%</u>	

<u>Retention basin II (4 x WQ Vol)</u>	<u>50%</u>	
<u>Infiltration (1 x WQ Vol)</u>	<u>50%</u>	
<u>Sand filter</u>	<u>65%</u>	<u>67-100%</u>
<u>Infiltration (2 x WQ Vol)</u>	<u>65%</u>	
<u>Retention basin III (4 x WQ Vol with aquatic bench)</u>	<u>65%</u>	

\*Innovative or alternate BMPs not included in this table may be allowed at the discretion of the local program administrator or the department. Innovative or alternate BMPs not included in this table that target appropriate nonpoint source pollution other than phosphorous may be allowed at the discretion of the local program administrator or the department.

**4VAC50-60-1186. Stream channel erosion.**

A. Properties and receiving waterways downstream of any land-disturbing activity shall be protected from erosion and damage due to changes in runoff rate of flow and hydrologic characteristics, including but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.

B. The permit-issuing authority shall require compliance with subdivision 19 of 4VAC50-30-40 of the Erosion and Sediment Control Regulations, promulgated pursuant to Article 4 (§ 10.1-560 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.

C. The permit-issuing authority may determine that some watersheds or receiving stream systems require enhanced criteria in order to address the increased frequency of bankfull flow conditions (top of bank) brought on by land-disturbing activities. Therefore, in lieu of the reduction of the two-year post-developed peak rate of runoff as required in subsection B of this section, the land development project being considered shall provide 24-hour extended detention of the runoff generated by the one-year, 24-hour duration storm.

D. In addition to subsections B and C of this section, permit-issuing authorities, by local ordinance may, or the board by state regulation may, adopt more stringent channel analysis criteria or design standards to ensure that the natural level of channel erosion, to the maximum extent practicable, will not increase due to the land-disturbing activities. These criteria may include, but are not limited to, the following:

1. Criteria and procedures for channel analysis and classification.
2. Procedures for channel data collection.

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3. Criteria and procedures for the determination of the magnitude and frequency of natural sediment transport loads.

4. Criteria for the selection of proposed natural or manmade channel linings.

## **4VAC50-60-1188. Flooding.**

A. Downstream properties and waterways shall be protected from damages from localized flooding due to changes in runoff rate of flow and hydrologic characteristics, including but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.

B. The 10-year postdeveloped peak rate of runoff from the development site shall not exceed the 10-year predeveloped peak rate of runoff.

C. In lieu of subsection B of this section, localities may, by ordinance, adopt alternate design criteria based upon geographic, land use, topographic, geologic factors or other downstream conveyance factors as appropriate.

D. Linear development projects shall not be required to control post-developed stormwater runoff for flooding, except in accordance with a watershed or regional stormwater management plan.

## **4VAC50-60-1190. ~~{Reserved}~~ Regional (watershed-wide) stormwater management plans.**

This section enables localities to develop regional stormwater management plans. State agencies intending to develop large tracts of land such as campuses or prison compounds are encouraged to develop regional plans where practical.

The objective of a regional stormwater management plan is to address the stormwater management concerns in a given watershed with greater economy and efficiency by installing regional stormwater management facilities versus individual, site-specific facilities. The result will be fewer stormwater management facilities to design, build and maintain in the affected watershed. It is also anticipated that regional stormwater management facilities will not only help mitigate the impacts of new development, but may also provide for the remediation of erosion, flooding or water quality problems caused by existing development within the given watershed.

If developed, a regional plan shall, at a minimum, address the following:

1. The specific stormwater management issues within the targeted watersheds.

2. The technical criteria in 4VAC50-60-1180 through 4VAC50-60-1188 as needed based on subdivision 1 of this section.

3. The implications of any local comprehensive plans, zoning requirements, local ordinances pursuant to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, and other planning documents.

4. Opportunities for financing a watershed plan through cost sharing with neighboring agencies or localities, implementation of regional stormwater utility fees, etc.

5. Maintenance of the selected stormwater management facilities.

6. Future expansion of the selected stormwater management facilities in the event that development exceeds the anticipated level.

**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 (4VAC50-60)

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

Department of Conservation and Recreation Permit Application Fee Form, (DCR 199-145) ~~(09/04)~~ (09/08).

VSMP General Permit ~~Registration Statement~~ for Stormwater Discharge from Construction Activity Stormwater Discharges, ~~(DCR01)~~ Activities (VAR10), (DCR 199-146) ~~(09/04)~~ (09/08).

VSMP General Permit Notice of Termination ~~for~~ Construction Activity Stormwater Discharges, ~~(DCR01)~~ (VAR10), (DCR 199-147) ~~(09/04)~~ (09/08).

VSMP General Permit for Discharge of Stormwater from Construction Activities (VAR10), (DCR199-191) (09/08).

VSMP General Permit Registration Statement for Stormwater Discharges From Small Municipal Separate Storm Sewer Systems (VAR04), (DCR 199-148) (07/08).

VA.R. Doc. No. R08-1245; Filed October 7, 2008, 3:32 p.m.



## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### BOARD OF JUVENILE JUSTICE

#### Fast-Track Regulation

**Title of Regulation:** 6VAC35-20. Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs (amending 6VAC35-20-37).

**Statutory Authority:** § 66-10 of the Code of Virginia.

**Public Hearing Information:** No public hearings are scheduled.

**Public Comments:** Public comments may be submitted until November 27, 2008.

**Effective Date:** December 12, 2008.

**Agency Contact:** Janet P. Van Cuyk, Regulatory Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-4097, FAX (804) 371-0773, or email janet.vancuyk@djj.virginia.gov.

**Basis:** Section 66-10 of the Code of Virginia establishes the general authority of the Board of Juvenile Justice to promulgate regulations. This action is necessary due to legislation enacted during the 2006 General Assembly session. Chapter 168 of the 2006 Virginia Acts of Assembly (SB 190) amends § 66-24 of the Code of Virginia relating to summary suspension of licenses or certificates for group homes and residential facilities under certain circumstances.

In 2005 the General Assembly gave the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services Board authority to issue a summary suspension order for children's group homes and residential facilities in cases of immediate and substantial threat to the health, safety, and welfare of residents.

In 2006 the Joint Subcommittee Studying Private Youth and Single Family Group Homes pursuant to HJR 685 (2005) recommended providing the same summary suspension order authority to the Superintendent of Public Instruction, the Director of the Department of Juvenile Justice, and the Commissioner of Social Services. Chapter 168 of the 2006 Virginia Acts of Assembly (SB 190) is intended to provide consistency in the legal authority for the interdepartmental licensure program for children's residential facilities by giving all four departments the authority to address egregious circumstances while ensuring due process for the licensees or certificate holders. The legislation authorizes the Superintendent of Public Instruction, the Director of the Department of Juvenile Justice, and the Commissioner of Social Services to issue orders of summary suspension of a license or certificate to operate a group home or other residential facility for children in cases of immediate and

substantial threat to the health, safety, and welfare of residents.

**Purpose:** The existing regulation prescribes how, in accordance with §§ 16.1-234, 16.1-309.1, 16.1-309.9 B, 16.1-309.10, 16.1-349, and 66-10 of the Code of Virginia, the Board and Department of Juvenile Justice will monitor and approve residential and nonresidential programs that are part of the Commonwealth's juvenile justice system. The emergency regulation adds procedures to the existing certification process that will enable the director to issue an order of summary suspension consistent with the statutory authority. The regulation is intended to provide the process for suspending the license or certificate to operate a group home or residential facility for children in cases of immediate and substantial threat to the health, safety, and welfare of the residents. The regulations will provide the basis for the department to act in accordance with legal protocols and ensure protections for the legal rights of all parties that may be affected by an action to suspend a license or certificate.

**Rationale for Using Fast-Track Process:** There are two reasons for using the fast track process for promulgating this regulation. First, this regulation is not a substantive change to the powers of the director and the State Board of Juvenile Justice. The actual authority of the director to take action against a licensee or a certificate holder dates back to 1992. As promulgated in 1992, former regulations 6VAC35-20-120 and 6VAC35-20-130 allowed the director to withdraw funding or prohibit placement of children in certified child residential facilities.

The current regulation was amended in 2003 (6VAC35-20-37). Current regulatory law provides the director with the authority to take immediate administrative action when there is evidence of any life, health, or safety violation or a program is not in substantial compliance with board-approved standards, policies, or the local plan for Virginia Juvenile Community Crime Control Act programs. The administrative action may include withholding funds; removing juveniles from the program; or placing the program on administrative probation for up to six months pending certification action by the board. Therefore, the proposed regulation is not a substantive change to the director's authority. The proposed regulation clarifies the duties of the director; enhances the due process rights of the licensee or certificate holder; and clarifies the circumstances in which the director may issue a summary suspension order and the due process rights for the certificate or license holder for whom the summary order was issued against.

Second, this regulatory action is mandated by Chapter 168 of the 2006 Virginia Acts of Assembly (SB 190) and the proposed changes are consistent with the Code of Virginia amendments made by Chapter 168 of the 2006 Virginia Acts of Assembly. (See § 66-24 of the Code of Virginia.) Moreover, the proposed regulation addresses a fundamental

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due process notice issue by fixing a critical timing flaw in the law as passed by the General Assembly. As amended, § 66-24 of the Code of Virginia states that the summary order of suspension becomes effective at the time of issuance by the director. By law, the licensee then has three business days to appeal the decision from the date of issuance. However, § 66-24 requires that summary order of suspension be served on the licensee or its designee as soon as practicable thereafter by personal service and certified mail, return receipt requested, to the address of record of the licensee. The issue is that the timeframe for requesting an appeal could elapse before the licensee receives notice that the summary order of suspension has been issued and his right to appeal. The proposed regulation requires the director to provide notice of the issuance of the summary suspension immediately upon its issuance verbally and by facsimile.

**Substance:** The current regulation allows the director to take immediate administrative action whenever evidence is found of any life, health, or safety violation or a program is not in substantial compliance with board-approved standards, policies, or local plan for Virginia Juvenile Community Crime Control Act programs. Such administrative action may include withholding funds; removing juveniles from the program; or placing the program on administrative probation for up to six months pending certification action by the board.

The proposed regulation significantly improves the due process rights for licensees and certificate holders upon whom a summary order of suspension has been issued by expediting notice and ensuring that the licensee or certificate holder receives a summary of the information used as the basis for the summary order of suspension. The proposed regulation allows the director to issue a summary order of suspension of the license or certificate of any group home or residential facility when conditions or practices exist in the home or facility that pose an immediate and substantial threat to the health, safety, and welfare of the juveniles who are residents. As required by the Code of Virginia, the new language in the proposed regulation establishes that the summary order of suspension will take effect upon its issuance. The new language provides the process for serving notice and the timeframes for requesting and conducting an appeal.

**Issues:** These provisions are advantageous to the public because they provide additional protections for the health, safety, and welfare of individuals receiving services in licensed group homes and their families. The regulation implements legislative changes that allow the director to act promptly to suspend the operation of a licensed group home or residential facility when there is evidence of immediate and substantial risk to the residents.

The proposed regulations significantly improve the due process rights for licensees and certificate holders upon whom a summary order of suspension has been issued by

expediting notice and ensuring that the licensee or certificate holder receives a summary of the information used as the basis for the summary order of suspension.

There are no known disadvantages to this regulation.

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

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 168 of the 2006 Virginia Acts of the Assembly, the Board of Juvenile Justice (Board) proposes to set forth procedures for summarily suspending the license of any group home or residential facility that poses an "immediate and substantial threat to the health, safety and welfare of its residents."

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

Estimated Economic Impact. During its 2006 session, the General Assembly passed legislation which gives the Director of the Department of Juvenile Justice (DJJ) the power to "issue a summary order of suspension of the license or certificate of any group home or residential facility" regulated by DJJ that is deemed an immediate threat to the health and safety of its residents. This legislation stipulates that any such suspension would be effective upon issuance. The legislation further stipulates that affected licensees (certificate holders) had to be served with notice of the suspension "as soon as practicable... by personal service and certified mail" and that such notice has to include the time, date and location of a hearing to determine if the suspension is appropriate. The legislation mandates that all suspension hearings occur no later than three days after the summary suspension order is issued.

Since the code section that this legislation amended has a clause that requires the affected agencies to promulgate regulations to implement the legislation's provisions within 280 days of enactment, the Board promulgated emergency regulations. These emergency regulations did not differ in any substantive way from the specific requirements enumerated in Chapter 168. Emergency regulations became effective on August 1, 2007 and will expire on July 31, 2008.

The Board now proposes to promulgate regulations to replace the emergency regulations that will soon expire. The Board proposes new regulations that differ from expiring regulations in several substantive ways. The Board proposes to specifically list conditions and actions that would constitute an "immediate and substantial threat" to residents of affected facilities. A facility will be subject to summary suspension under these proposed regulations if, for example, facility staff are "permitting, aiding or abetting the commission of any illegal acts in... the facility" or are "engaging in conduct or practices that are in violation of statutes related to abuse or neglect of children." This change will very likely benefit regulated entities since it clearly lays out the behaviors that

can trigger licensure suspension so that those behaviors can be avoided.

The Board also proposes several other changes to emergency regulations. The Board proposes to:

- Notify license holders of summary suspension, verbally and by facsimile, on the day the summary suspension is issued. Because notification by certified mail very likely would not get to a licensee before the three day hearing deadline, the Board believes that all parties would be better protected by regulations that require quicker notice than does the mandating legislation,
- Allow license holders to appear at the hearing by phone or video as well as in person and
- Explicitly promulgate language that recognizes the right of license holders to be represented by council and to present evidence and witnesses.

These changes will likely all benefit the licensees, who will have their procedural rights better preserved. These changes may also help to protect children; not only from the immanent harm that these regulations aim to stop, but also from the harm that can be caused by unnecessarily disrupting their placements.

While Chapter 168, these proposed regulations, and the emergency regulations that they will replace, all grant the Director of DJJ a new power to summarily suspend licensure, in practice the Director has been able to shut down shoddily run facilities since 1992. Other DJJ regulations dating from this time allow the Director to both refuse to fund licensed facilities and the power to refuse to place and/or remove children from placements for cause. Because the Director's new power is duplicative in its effects, no regulated entity is likely to face any increased costs on account of this regulatory action.

**Businesses and Entities Affected.** The Department of Juvenile Justice reports that the Board currently certifies 26 community and family-oriented group homes. All of these are subject to the requirements of these proposed regulations.

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

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

**Effects on the Use and Value of Private Property.** This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

**Small Businesses: Costs and Other Effects.** Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

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

**Real Estate Development Costs.** This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Juvenile Justice concurs with the economic impact analysis as submitted by the Department of Planning and Budget.

Summary:

*The amendments allow the director to issue a summary order of suspension of the license or certificate of any group home or residential facility when conditions or practices exist in the home or facility that pose an immediate and substantial threat to the health, safety, and welfare of the juveniles who are residents.*

*The amendments establish that the summary order of suspension will take effect upon its issuance. The amendments provide the process for serving notice and the timeframes for requesting and conducting an appeal.*

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## **6VAC35-20-37. Director's authority to take immediate administrative action.**

A. Nothing in this regulation shall be construed to limit the director's authority to take immediate administrative action in accordance with law whenever (i) evidence is found of any life, health, or safety violation or (ii) a program is not in substantial ~~non~~compliance with board-approved standards, policies, or local plan for Virginia Juvenile Community Crime Control Act programs. Such administrative action may include, but is not limited to (a) withholding funds; (b) removing juveniles from the program; or (c) placing the program on administrative probation for up to six months pending certification action by the board. In taking such action, the department shall notify both the program, the administrative entity that the program reports to, and the board, in writing, of the reason for the administrative action, and the action the program must take to correct the situation.

B. In accordance with subsection A of this section and pursuant to the provisions set forth in § 66-24 of the Code of Virginia, the director may issue a summary order of suspension of the license or certificate of any group home or residential facility so regulated by the department.

1. Conditions or practices existing in the home or facility posing an immediate and substantial threat to the health, safety, and welfare of the residents include:

a. Violations of any provision of applicable laws or applicable regulations made pursuant to such laws;

b. Permitting, aiding, or abetting the commission of any illegal act in the regulated home or facility;

c. Engaging in conduct or practices that are in violation of statutes related to abuse or neglect of children;

d. Deviating significantly from the program or services for which a license or certificate was issued without obtaining prior written approval from the regulatory authority or failing to correct such deviations within the specified time; or

e. Engaging in a willful action or gross negligence that jeopardizes the care or protection of the resident.

2. The director shall immediately notify the licensee or certificate holder verbally and by facsimile of the issuance of the preliminary order of suspension and the opportunity for a hearing before the director or his designee within three working days of the issuance of the preliminary summary order of suspension.

a. The licensee or certificate holder may decline the opportunity for an appeal to the director or his designee.

b. Whenever an appeal is requested and a criminal charge is also filed against the appellant involving the same conduct, the appeal process shall be stayed until the

criminal prosecution is completed. During such stay, the licensee's or certificate holder's right of access to the records of the department regarding the matter being appealed shall also be stayed. Once the criminal prosecution in court has been completed, the department shall advise the appellant in writing of his right to resume his appeal within the timeframes provided by law and regulation.

3. The licensee or certificate holder may appear before the director or his designee by personal appearance or by telephone. Any documents filed may be transmitted by facsimile and the facsimile and any signatures thereon shall serve, for all purposes, as an original document.

a. Upon request, the department shall provide the appellant a summary of the information used in making its determination. Information prohibited from being disclosed by state or federal law or regulation shall not be released. In the case of any information being withheld, the licensee or certificate holder shall be advised of the general nature of the information and the reasons, of privacy or otherwise, that it is being withheld.

b. The director or his designee shall preside over the appeal. With the exception of the director, no person whose regular duties include substantial involvement with the certification or licensing of the facilities shall preside over the appeal.

(1) The licensee or certificate holder may be represented by counsel.

(2) The licensee or certificate holder shall be entitled to present the testimony of witnesses, documents, factual data, arguments, or other submissions of proof.

4. The director or his designee shall have the authority to sustain, amend, or reverse the summary suspension order. The director or his designee shall notify the licensee or certificate holder in writing of the results of the appeal within 10 days of the hearing. Notification of the results of the appeal before the director or his designee shall be mailed certified with return receipt to the licensee or certificate holder.

a. The chair of the board must be immediately notified when the director issues a final order of summary suspension. In accordance with 6VAC35-20-65, the director shall report to the board no later than its next regularly scheduled meeting the action taken.

b. If the licensee or certificate holder is not satisfied, the licensee or certificate holder may dispute the noncompliance finding in accordance with 6VAC35-20-67.

VA.R. Doc. No. R07-639; Filed September 30, 2008, 2:29 p.m.

## TITLE 9. ENVIRONMENT

## CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

## Final Regulation

**REGISTRAR'S NOTICE:** The following model public participation guidelines 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:** **9VAC10-10. Public Participation Guidelines (repealing 9VAC10-10-10, 9VAC10-10-20, 9VAC10-10-30).**

**9VAC10-11. Public Participation Guidelines (adding 9VAC10-11-10 through 9VAC10-11-110).**

**Statutory Authority:** §§ 2.2-4007.02 and 10.1-2103 of the Code of Virginia.

**Effective Date:** November 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:**

*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 actions; (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

**9VAC10-11-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Chesapeake Bay Local Assistance 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).

**9VAC10-11-20. 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 Chesapeake Bay Local Assistance Board, 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](http://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

#### **9VAC10-11-30. 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.

#### **9VAC10-11-40. 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 9VAC10-11-30, 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

#### **9VAC10-11-50. 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.

### **9VAC10-11-60. 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.

### **9VAC10-11-70. 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.

### **9VAC10-11-80. 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.

### **9VAC10-11-90. 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.

### **9VAC10-11-100. 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

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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.

## **9VAC10-11-110. 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. R09-1443; Filed October 3, 2008, 12:38 p.m.

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## **TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS**

### **STATE CORPORATION COMMISSION**

#### **Final Regulation**

<p><b>REGISTRAR'S NOTICE:</b> The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, 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.</p>
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Title of Regulation: **10VAC5-200. Payday Lending (amending 10VAC5-200-10, 10VAC5-200-20, 10VAC5-200-40, 10VAC5-200-60, 10VAC5-200-70, 10VAC5-200-80; adding 10VAC5-200-33, 10VAC5-200-35, 10VAC5-200-110, 10VAC5-200-120).**

Statutory Authority: §§ 6.1-458 and 12.1-13 of the Code of Virginia.

Effective Date: January 1, 2009.

Agency Contact: E. J. Face, Jr., Bureau of Financial Institutions Commissioner, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9659, FAX (804) 371-9416, or email [joe.face@scc.virginia.gov](mailto:joe.face@scc.virginia.gov).

#### Summary:

*The amendments incorporate changes made by Chapter 849 of the 2008 Acts of Assembly (Chapter 849), which generally amends the Payday Loan Act effective January 1, 2009.\* The final regulations specify the information that licensees are required to collect and transmit to the payday lending database, and establish rules governing what licensees must do if they are unable to access the database at the time that they are required to transmit information to the database. The regulations also limit licensees' access to the database and require licensees to transmit limited information to the database in connection with certain loans that remain outstanding as of January 1, 2009. In addition, the regulations instruct licensees how to calculate a borrower's pay cycle and minimum loan term, and establish the rules applicable to extended payment plans and extended term loans, including when these types of repayment arrangements may be elected by borrowers. The final rules also require licensees to provide consumers with oral and written notices regarding extended payment plans and extended term loans, and address the waiting periods associated with these repayment arrangements. The regulations also contain definitions for "member of the military services of the United States" and "other dependent of a member of the military services of the United States," and establish the process by which licensees are required to determine whether an individual is a member of the military services of the United States, or the spouse or other dependent of a member of the military services of the United States. The regulations also make various changes to 10VAC5-200-40, which relates to the prepayment of a payday loan, as well as 10VAC5-200-60, which pertains to the required posting of charges. Additionally, the regulations contain revisions to the text of the payday lending pamphlet, which licensees must give to all consumers prior to entering into payday loan transactions. Various other requirements and limitations are also set forth in the final regulations.*

*The final regulations made numerous changes to the proposed regulations. In 10VAC5-200-10, payments effected by the use of a debit card are no longer included in the definition of "good funds instrument," and "National Guard" has been added to the definition of "member of the military services of the United States." In 10VAC5-200-20, various revisions were made to subsection F, which addresses a borrower's pay cycle and corresponding minimum loan term. Subsection G was modified to provide examples of acceptable supporting documentation for a borrower's pay cycle. Subsection M of 10VAC5-200-20*

was revised to require licensees to immediately return a check given as security for a loan when the loan is either cancelled or repaid in full with cash or good funds instrument. In 10VAC5-200-33, subdivision B 2 was amended to allow a borrower to exchange security checks with a licensee when making a payment on an extended payment plan. The final regulations also changed the oral notice requirement relating to extended payment plans, which is set forth in subdivision C 4 of 10VAC5-200-33. Similar changes were made to the provisions relating to extended term loans, which are set forth in 10VAC5-200-35. Next, 10VAC5-200-40 and 10VAC5-200-60 were updated to reflect the amendments to 10VAC5-200-20 F. In 10VAC5-200-80 and 10VAC5-200-110, the references to "DMV" were replaced with "state driver's licensing authority." 10VAC5-200-110, which addresses the payday lending database, was also amended in the final regulations. In subsection C, the information required to be transmitted to the database was revised to include an applicant's date of birth. The final regulations removed the proposed requirement in subdivision C 7 that licensees transmit information to the database regarding whether specific applicants are members of the military services of the United States, or the spouses or other dependents of such members. In lieu of this requirement, a new subsection N will require licensees to transmit each business day the total daily number of individuals who were unable to obtain payday loans because they are members of the military services of the United States, or the spouses or other dependents of such members. Subdivision D 2 was amended to require licensees to partially redact applicants' driver's license numbers and identification card numbers so that only the last four digits remain visible in the licensees' records. The final regulations also eliminated the proposed requirement that licensees transmit to the database information concerning an applicant's source of income for repayment of a loan (subsection F) and a borrower's method of repayment or satisfaction (subsection J). The regulations added an express requirement that licensees transmit information to the database when a judgment obtained by a licensee against a borrower is satisfied (subdivision J 7). Subsection O was modified to permit a licensee to access information that the licensee is required to transmit to the database provided that such access is for the sole purpose of verifying, updating, or correcting the information.

\* Subsection A of § 6.1-453.1 of the Code of Virginia became effective on July 1, 2008.

AT RICHMOND, SEPTEMBER 19, 2008

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2008-00295

Ex Parte: In re: proposed amendments  
to Payday Loan Act regulations

## ORDER ADOPTING FINAL REGULATIONS

On June 17, 2008, the Commission issued an Order to Take Notice of new regulations proposed by the Bureau of Financial Institutions ("Bureau") to implement extensive amendments to the Payday Loan Act ("the Act"), §§ 6.1-444 et seq. of the Code of Virginia that were adopted by the General Assembly in 2008. In its Order the Commission provided interested parties an opportunity to submit written comments on or before July 25, 2008, and a further opportunity to offer oral comments at a public hearing to be conducted on August 5, 2008. The Order also required the proposed regulations to be published in the Virginia Register of Regulations. That publication was completed on July 7, 2008.<sup>[1]</sup>

Amendments to the Act made by Chapter 849 of the 2008 Acts of Assembly require the Commission to certify and contract with one or more third parties to develop, implement, and maintain a real-time Internet-accessible database that contains such payday loan information as the Commission may require. The Act as amended prevents individual borrowers from obtaining payday loans under various circumstances, such as if they have outstanding payday loans or repaid previous payday loans on the same day they are seeking new payday loans, or if they are members of the military services of the United States or the spouses or other dependents of such members. The law also provides borrowers the option under certain circumstances to repay their payday loans by means of extended payment plans or extended term loans, and requires borrowers who elect either of those options to wait a period of time after repaying their loans before obtaining new payday loans. It also modifies the amount of interest and fees that may be charged by a licensed payday lender, provides that the term of a payday loan must be at least two times a borrower's pay cycle, and imposes additional requirements and limitations.

Many of the reforms are complex and warrant substantial changes to the Commission Payday Lending Rules, 10VAC5-200-10 et seq. The amendments to the Act are generally effective January 1, 2009, but the implementing regulations must be finalized well in advance so that the database can be developed in conformity with the regulations and operational before January 1, 2009. The proposed amendments to the regulations (i) specify the information that licensees are required to collect and transmit to the payday lending database and establish rules governing what licensees

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must do if they are unable to access the database at the time that they are required to transmit information to the database; (ii) limit licensees' access to the database and require licensees to transmit limited information to the database in connection with certain loans that remain outstanding as of January 1, 2009; (iii) instruct licensees how to determine borrower's pay cycle and minimum loan term, and require licensees to return the check given as security for a loan to a borrower if the loan is repaid in full with cash or good funds instrument; (iv) establish the rules applicable to extended payment plans and extended term loans, including when these types of repayment arrangements may be elected by borrowers; (v) require licensees to provide consumers with oral and written notices regarding extended payment plans and extended term loans, and address the waiting periods associated with these repayment arrangements; (vi) contain definitions for "member of the military services of the United States" and "other dependent of a member of the military services of the United States," and establish the process by which licensees are required to determine whether an individual is a member of the military services of the United States, or the spouse or other dependent of a member of the military services of the United States; (vii) make various changes to 10VAC5-200-40, which relates to the prepayment of a payday loan, as well as 10VAC5-200-60, which pertains to the required posting of charges; and (viii) revise the text of the payday lending pamphlet, which licensees must give to all consumers prior to entering into payday loan transactions.

Written comments on the proposed regulations were received from the Community Financial Services Association of America ("CFSA"); the Virginians Against Payday Loans ("VAPL"); the Virginia Partnership to Encourage Responsible Lending ("VaPERL"); the Center for Responsible Lending ("CRL"); the Office of the Attorney General, Division of Consumer Counsel ("AG"); Veritec Solutions, LLC ("Veritec"); and Checks Mate, Inc. ("Checks Mate"). The CFSA, VAPL, VaPERL, CRL, the AG, and Ward Scull, III, a businessman from Newport News, Virginia and one of the cofounders of VAPL, also appeared at the public hearing to offer oral comments and respond to the written comments submitted by others. The Commission has considered all comments received, both written and oral, and hereby adopts a number of changes to the proposed regulations as part of its final regulations and as discussed below.

### **10VAC5-200-10. Definitions.**

First, CFSA recommended that the definition of "duplicate original" be clarified to allow e-signed documents. We find that such clarification is not necessary. E-signed documents are not prohibited.

CFSA also asked that the regulations be further clarified to explicitly allow payments to be made by use of a credit card. The definition of "good funds instrument" currently includes

"payment effected by use of a debit or credit card." This comment, however, caused us to refocus on this definition and one of the new provisions in the law that states "[a] licensee shall not obtain authorization to electronically debit a borrower's deposit account in connection with any payday loan."<sup>[2]</sup> Accordingly, the inclusion of payment by use of a debit card must be struck from the definition of "good funds instrument." The inclusion of credit card payments will remain. Similarly, other references to payments by debit cards that appear elsewhere in the regulations should also be removed.

CFSA and VAPL focused on the definition of "[m]ember of the military services of the United States" and "[o]ther dependent of a member. . ." The proposed definitions were intended to be consistent with the Department of Defense's regulations.<sup>[3]</sup> However, VAPL recommended adding "National Guard" to the list of services in the definition, and at the hearing CFSA stated that it had no objection.<sup>[4]</sup> We agree that any member of the National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer should be explicitly included as a "member of the military services of the United States."

VAPL also recommended that the definition of "[o]ther dependent of a member. . ." be revised to include persons receiving more than half of their income from any married couple including a member of the military and his or her spouse. The proposed regulation tracks the Department of Defense's regulation and will not be modified.

### **10VAC5-200-20. Requirements for licensees; operating rules; acquisitions.**

The CRL had a number of technical changes to reinforce the importance of the real-time entry and accuracy of the data in the database. CRL asserted that licensees therefore should be held to a high standard of expediency and accuracy of reporting.<sup>[5]</sup> Several of those changes have been incorporated.

A number of commenters focused their attention on 10VAC5-200-20 F, the provisions that define borrowers' minimum loan terms. The AG addressed this provision, and at his recommendation we have incorporated revisions to address a borrower who is paid more frequently than weekly. Such borrower's minimum loan term should be 14 days, which is two times the minimum term loan allowed currently by statute. VAPL was concerned that a borrower paid semi-monthly with a minimum loan term of 30 days, as proposed, would not receive a second paycheck on months with 31 days before loan repayment would be due. VAPL therefore recommended the minimum loan term for borrowers paid semi-monthly be revised to 31 days. VAPL had a similar concern with borrowers paid monthly, and recommended the minimum loan term for those borrowers be revised to 62 days. We have adopted those changes.

VaPERL recommended adding "Veteran Benefits or other forms of pension received monthly" to examples of monthly sources of income in addition to monthly paychecks. CFSA noted that "to include is to exclude."<sup>[6]</sup> It is our intent for this section to define the minimum loan term for all borrowers paid or receiving income on a monthly basis from whatever source that income may be derived. Consistent with CFSA's suggestion, we have deleted the examples, and the regulation now simply refers to a borrower paid monthly.

The formula set forth in 10VAC5-200-20 F 5 was the topic of extended discussion in written and oral comments. Several commenters recommended the Commission choose a more certain and less complicated loan term in place of the formula approach in the proposed regulations. The recommendations ranged from a minimum loan term of 14 days to 60 days. We will revise this regulation to provide that the minimum loan term for a borrower who is paid either less frequently than monthly (i.e., his or her pay cycle is greater than 30 days) or on an irregular basis not covered in 10VAC5-200-20 F 1 will be 62 days.

CFSA next sought guidance on what a licensee should retain to document a borrower's pay cycle. The regulations are hereby revised to advise licensees that supporting documentation may include, but not be limited to, a pay stub if the pay cycle is clearly indicated thereon or a representation by the borrower in the written loan application.

CFSA also sought clarification that the prohibition contained in 10VAC5-200-20 H did not preclude use of Check 21 clearing. This concern is not justified. The regulations as drafted do not prohibit depository institutions from processing checks in accordance with Check 21.

VAPL offered language to clarify that a licensee shall hold no more than one security check. That language is consistent with the statute and we will incorporate it.

The AG also suggested revisions to 10VAC5-200-20 M to require a licensee to return a borrower's check not only when a loan is repaid in full with cash, but also when it is canceled. He also recommended that licensees be required to return the security check immediately if the borrower repays or otherwise satisfies a payday loan with cash. Those revisions are also appropriate and are hereby made.

### **10VAC5-200-33. Extended payment plans.**

VaPERL urged the Commission to allow borrowers to elect an extended payment plan to repay a payday loan even after a loan is past due. However, § 6.1-459(27)(a)(ii) of the Act provides that borrowers may elect "at any time on or before its due date, to repay such fifth payday loan by means of an extended payment plan as provided in subdivision 26(b)." The proposed regulation reconciles the timing provisions for all extended payment plan elections with the specific language in the statute for extended payment plans elected in conjunction with a fifth payday loan. Therefore, a borrower is

permitted to enter into an extended payment plan at any time on or after the date a loan is made through the date that the loan is due to be repaid. However, 10VAC5-200-70 H explicitly allows mutually agreeable alternative payment plans, and we have added language to cross-reference that provision.

The regulations provide that a licensee shall permit a borrower to repay a payday loan "in at least four equal installments over a term of at least 60 days." The VAPL recommends the regulations provide for a minimum term of at least 90 days, arguing that borrowers should have the benefit of an extended payment plan term longer than the minimum loan term, noting that at 60 days, a borrower paid monthly would have no extension over his or her minimum loan term that would be otherwise available. VAPL urges the Commission to require licensees to offer minimum terms of no less than 90 days for extended payment plans. VaPERL also asked the Commission to provide guidance to licensees to determine the correct term for each borrower by accounting for individual financial circumstances. We find it appropriate to adhere to § 6.1-459(26)(b) of the Act, which explicitly provides that an extended payment plan shall have a term of at least 60 days.

CFSA suggested that the regulations should provide for "substantially equal payments" and for payments to be spread out "substantially evenly" over the term of the loan. The change proposed by CFSA makes the regulation more ambiguous, and conflicts with Virginia Code § 6.1-459(26)(b) of the Act. The language in the Act is very specific, and provides for "at least four equal installments over an aggregate term of at least 60 days." We observe, however, the normal and acceptable business practice is that when a payment due date falls on a holiday or weekend, the payment is due on the next business day.

Also in this section of the regulations, CFSA and VAPL contend that a licensee should not be prohibited from exchanging security checks, or accepting a subsequent and smaller security check in place of the original security check when a borrower makes an installment payment under an extended payment plan. VAPL offered specific language changes, and at the hearing CFSA agreed to that language.<sup>[7]</sup> We find those changes to be reasonable.

VAPL next turned to the written notice required to be posted by licensees, and suggested that it should be more personalized and clarify when the rolling -2-month period during which a borrower is allowed only one extended payment plan begins. We have no objection to the first suggestion; however, we will slightly modify VAPL's personalization to make the notice more accurate relative to eligibility. We do not think the desired clarification is necessary or belongs in the written notice.

CFSA complains that the length of the oral notice is too long. Other commenters thought the proposed oral notice is

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important and helpful to consumers. We also agree that oral notice is important but want to avoid a situation where a lengthy prescribed statement is read so quickly that in reality it provides little or no actual notice of the extended payment plan option and its features. We will therefore modify the oral notice prescribed in the proposed regulations to instead require a licensee to (i) orally notify an applicant that he is eligible for an extended payment plan, (ii) direct the applicants to read the written notice posted in the licensee's office or the "Borrower Rights and Responsibilities" pamphlet, and (iii) advise the applicant that the licensee is available to answer any questions. We believe this approach will protect borrowers more effectively than a rushed reading of a long text.

### **10VAC5-200-35. Five payday loans within 180 days.**

Although an extended payment plan is different from an extended term loan, which is provided as an option to a borrower seeking a fifth payday loan within 180 days, many of the comments we received on this section of the regulations were similar, such as comments supporting the addition of language to allow borrowers to exchange security checks when making an installment payment. We will adopt parallel changes in this section of the regulations.

CFSA also urged the Commission to eliminate the written and oral notice of the availability of an extended term loan, arguing that such notice is not required by the Act. CFSA again specifically complained that the oral notice required by this section of the regulations was burdensome and too long. Although not expressly required by the Act, requiring notice is well within our authority and is essential to fulfilling the intent of the General Assembly. We will, however, also modify the oral notice relating to an applicant's eligibility for an extended term loan.

Finally, VAPL urged the Commission to include payday loans made between October 1, 2008 and December 31, 2008, for purposes of determining how many loans a borrower obtained in any rolling 180-day period, rather than beginning that count on January 1, 2009. We decline to make that change. Chapter 849 is generally effective January 1, 2009, and beginning both the rolling 180-day and 12-month periods applicable to extended payment plans and extended term loans, respectively, on that effective date provides a consistent start date.

### **10VAC5-200-40. Borrower prepayment [ : right to cancel ] .**

Although no commenters addressed the majority of this section of the regulations, several changes, most notably explicit inclusion of a borrower's right to cancel a payday loan, and the provisions addressing the prepayment of a payday loan (particularly when an extended payment plan or extended term loan has been elected) were necessitated by the

amendments to the Act and other changes adopted in these regulations.

VAPL did urge the Commission to modify 10VAC5-200-40 F to require partial prepayments on extended payment plans and extended term loans to result in a pro-rata adjustment of the total interest due on a loan. The statute, however, requires equal payment installments which would preclude pro-rata interest adjustments, as each installment is effectively a partial prepayment. A prepayment that results in full payment or satisfaction of a loan may result in a pro-rata interest adjustment.

### **10VAC5-200-70. Additional business requirements and restrictions.**

VAPL first suggests that this section of the regulations be modified to include a requirement that licensees post a sign that members of the military and their dependants are prohibited under the Act from getting a payday loan in Virginia. We find that one more sign is not necessary, as it will quickly become evident that such lending is not allowed.

This section of the regulations also reiterates the statutory provision providing that a licensee shall not make a payday loan to a member of the military or their spouse or other dependant, and further directs that four questions be included in the loan application. First, consistent with our earlier revision to the definition of a "member of the military services of the United States," we will add references to "National Guard" in these questions. VAPL also suggests adding a clear and explicit prohibition against a licensee making a payday loan to an applicant unless the applicant answers "no" to all four questions. We believe such prohibition is reasonable and comports with the Act as amended. CFSA also asked the Commission to substitute the Department of Defense certification for the four questions included in the regulations.<sup>[8]</sup> We note that the prohibition in these regulations is broader than that contemplated by the Department of Defense certification.

One final comment addressed this section. Specifically, VAPL recommended extensive revision to 10VAC5-200-70 F, which we had not proposed to change. VAPL would have us impose a requirement that licensees provide payday lending notices, applications, and other materials in Spanish to all applicants for whom Spanish is a native language. VAPL would further direct licensees to not make payday loans to any applicant whose native language is something other than English or Spanish unless the licensee determines that the applicant can read and understand the documents, or the licensee reads and explains the documents to the applicant in a language the applicant can comprehend, or the applicant is accompanied by someone who can and does read and explain the documents to the borrower. This policy directive was not addressed by the General Assembly despite the opportunity to do so amidst extensive debate.

Accordingly, we decline to make this policy determination in these regulations.

**10VAC5-200-80. Payday lending pamphlet text.**

Numerous changes to the text of the pamphlet are necessary to correspond to statutory amendments and changes adopted elsewhere in the regulations, and should be self explanatory. Also, the AG suggested adding language to the pamphlet directing certain applicants to contact credit counseling agencies or consumer finance companies. VAPL made a similar suggestion relative to another section of the regulations that would have required licensees to provide a Federal Trade Commission publication to applicants who were declined loans.<sup>[9]</sup> We believe that such additions go beyond the requirements of the Act, and decline to incorporate them, although we note that the Commission's website has a list of licensed credit agencies.

**10VAC5-200-110. Payday lending database.**

CFSA raised concern that the regulations imply that a prospective borrower must furnish a current Virginia driver's license or identification card issued by the Virginia Department of Motor Vehicles or "DMV" in order to apply for a payday loan. CFSA contends that such a requirement is too restrictive, and that licensees have always made loans to persons who did not reside within Virginia. It recommends that the requirement be modified to provide that any current government issued identification that includes a photograph of the prospective borrower may be used and relied upon by a licensee to verify a borrower's identity. Counsel for the Bureau explained that it was not the intent to limit borrowers to those with a Virginia driver's license or identification card, but countered that the modification suggested by CFSA would allow borrowers to use multiple identification cards, thus creating several unique borrower identification numbers to be entered into the database which would allow an individual borrower to circumvent the Act and provide the borrower with the opportunity to hold more than one outstanding payday loan at any one time. We agree with the Bureau that we must carefully consider the means of borrower identification to eliminate such opportunities. A single consistent source document containing identifying information is necessary to create a unique borrower identification for purposes of tracking payday loan activity in the database as contemplated by the Act. We agree, however, that the regulations should be clarified to allow use of driver's licenses and identification cards issued by states other than Virginia.

Veritec, a database provider in several other states, also addressed borrower identification. Veritec commended the Commission's effort to limit the personal data collected and transmitted from an individual borrower, but stated that for the database to effectively function, a balance between limiting the transmission of personal information and adequate data point collections must be achieved. "To

facilitate effective fraud detection, an additional data point . . . is needed." Veritec recommended the Commission also collect the applicant's date of birth. We will adopt that recommendation.

Veritec also noted that the normal practice in other states already using payday lending databases is to identify borrowers by means of borrowers' Social Security Numbers. Although the industry standard appears to be to use a borrower's full Social Security Number as the unique borrower identification number, numerous laws have been enacted or proposed that prohibit or significantly restrict the identification of individuals by means of their Social Security Numbers. Furthermore, storing borrowers' full Social Security Numbers in a centralized database increases the risk of identity theft. Accordingly, we find that we are required to consider and adopt a different means of uniquely identifying borrowers in the payday lending database. As noted above, we find that a current driver's license or identification card issued by the state licensing authority in a borrower's state of residence provides a single consistent source document that contains a combination of information sufficient to create a unique identifier for each borrower. Furthermore, at least in Virginia, a driver's license or identification card also includes a picture of the borrower. Borrowers will be uniquely identified in the database using a combination of the last four digits of their driver's license or identification card number, their numeric date of birth, and the first five digits of their zip code. If the General Assembly subsequently enacts legislation to expressly require Social Security Numbers to be used to uniquely identify borrowers in the payday lending database, we will modify our regulations accordingly. To further protect borrowers' identities, licensees will also be required to redact a borrower's driver's license or identification card number so that only the last four digits remain visible on the copy that is to be retained in their files.

CFSA and the AG recommend elimination of 10VAC5-200-110 C 7, which requires licensees to obtain and transmit data including "[w]hether the applicant is a member of the military services of the United States, or the spouse or other dependent of a member of the military services of the United States." They contend that the Act prohibits licensees from making payday loans to such persons, and therefore the removal of this information from what is required to be transmitted will reduce the complexity of the database, speed up the data entry process, and eliminate unnecessary information from the database. We agree. The Bureau, however, proposed this data point to facilitate responding to the directive of the General Assembly to "report to the Chairman of the House and Senate Commerce and Labor Committees regarding the utilization of payday loans, including . . . effectiveness of the prohibitions on military lending . . ." To facilitate the collection of data to respond to this legislative requirement, we will add a provision, new subsection N, to require licensees to report on a daily basis

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the number of individuals who were unable to obtain loans due to their status as a member of the military or the spouse or dependent of such a member.

This section of the regulations provides a list of additional information that a licensee must transmit to the database if an applicant is eligible for a payday loan. Subdivision F 5 includes "[s]ource of income for repayment of loan (employment or Social Security)." Both the AG and the CFSA urge the Commission to strike this data item. They contend that the source of funds for repayment should not matter, and this requirement is unnecessary. We agree.

Both the AG and CFSA also recommend elimination of a required data field in Subdivision J 2, which is the "method of repayment or satisfaction (e.g., cash, good funds instrument, check given to licensee as security for loan, other personal check, etc.)." They again contend that there is nothing in the Act that makes information concerning the source of funds used to repay or satisfy a payday loan necessary to the database or significant for future use, but will unnecessarily increase the amount of information maintained in the database. We agree with this recommendation as well and have deleted this data requirement.

The AG, however, also recommends an addition. Specifically, he suggests that licensees should be required to update the database when a judgment they obtained for a payday loan is paid. CFSA agreed, but expressed concern that licensees may not know a judgment has been paid on the same date it is paid, and urges the Commission to allow licensees additional time to enter such data. We will incorporate the AG's suggestion, but licensees will not be required to enter the data until the date they learn that the judgment has been satisfied.

The regulations provide procedures for those times in which a licensee is unable to access the database due to technical problems beyond the licensee's control, and require the licensee to collect specific information including the first and last name of the person in the call center who provides the results of a query. Veritec stated that given concerns for the safety and security of call center employees, it is standard and commonplace industry practice for call center employees to instead provide a "pseudonym, user name or a customer service representative identification number" and suggested a customer service representative identification number would provide the same level of accountability and verification as a first and last name. We appreciate this concern and have modified the regulations to permit the use of an identification number.

Subsection O of the regulations limits licensees' access to data in the database. It was suggested that licensees should be allowed access to all data that the individual licensee has entered into the database. Such access would provide the licensee with no more information than it should already possess, but would enable the licensees to reconcile internal

records with the information submitted to the database, and correct information previously submitted as required by Subdivision K 2. On consideration, we find such limited access would provide a better means of assuring quality control over the accuracy of the data in the database, and should be permitted.

Veritec emphasized the need to input historical data for transactions that will remain open on or after January 1, 2009, and urged the Commission to require licensees to input such data prior to being granted access to the database for verification of applicant eligibility. The regulation already directs such data to be collected and transmitted to the database. However, as a practical matter it will be impossible for the database provider or us to timely determine whether all such historic data has been uploaded by January 1, 2009. While we agree that such data is necessary, we decline to include a provision as suggested by Veritec.

## **10VAC5-200-120. Enforcement**

Finally, VaPERL and CRL recommended the regulations include substantial penalties for licensees that engage in intentional, willful, negligent, or repeated delays or inaccuracies in reporting data to the database. This section of the regulations already sets forth the penalties and consequences for any violations of the Act or regulations.

THE COMMISSION, having considered the proposed regulations and comments, is of the opinion that the attached regulations should be adopted as final.

### THEREFORE IT IS ORDERED THAT:

(1) The new regulations at Chapter 200 of Title 10 of the Virginia Administrative Code entitled "Payday Lending Rules," which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED effective January 1, 2009;

(2) The Commission's Division of Information Resources shall forthwith cause a copy of this Order, including a copy of the final regulations, to be forwarded to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations;

(3) This Order and the attached regulations shall be posted on the Commission's website at [www.scc.virginia.gov/case](http://www.scc.virginia.gov/case); and

(4) This case is dismissed from the Commission's docket of active cases.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to the Commissioner of Financial Institutions, who shall forthwith mail a copy of this Order and the final regulations to all licensed payday lenders and such other interested persons as he may designate.

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[1] 24:22 VA.R. 3048 et seq. July 7, 2008.

- [2] Virginia Code § 6.1-459(24).
- [3] Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 32 C.F.R. § 232.3(c).
- [4] Transcript 66.
- [5] Transcript 43-46.
- [6] Transcript 66.
- [7] Transcript 102.
- [8] Transcript 101.
- [9] VAPL would provide for such notice in 10VAC5-200-110 E.

**10VAC5-200-10. Definitions.**

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

"Act" means the Payday Loan Act (§ 6.1-444 et seq. of the Code of Virginia).

"Bureau" means the Bureau of Financial Institutions.

"Business day" for purposes of clause 1 (vi) of § 6.1-459 of the Code of Virginia and this chapter means a day on which the licensee's office is open for business as posted as required by subsection A of 10VAC5-200-70.

"Commission" means the State Corporation Commission.

"Duplicate original" for purposes of subdivision 2 of § 6.1-459 of the Code of Virginia and this chapter means an exact copy of a signed original, an exact copy with signatures created by the same impression as the original, or an exact copy bearing an original signature.

"Good funds instrument" for purposes of clause 1(vi) of § 6.1-459 of the Code of Virginia and this chapter means a certified check, cashier's check, money order or, if the licensee is equipped to handle such payments, payment effected by use of a [ ~~debit or~~ ] credit card.

"Liquid assets" for purposes of the Act and this chapter means cash on hand and in depository institutions, money market funds, commercial paper, and treasury bills.

"Member of the military services of the United States" for purposes of the Act and this chapter means a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, [ ~~or~~ ] Coast Guard, [ or National Guard ] serving on active duty under a call or order that does not specify a period of 30 days or fewer.

"Other dependent of a member of the military services of the United States" for purposes of the Act and this chapter means (i) an individual under the age of 18 whose mother or father is a member of the military services of the United States or (ii) an individual for whom a member of the military services of the United States provided more than one-half of the individual's financial support for 180 days immediately preceding the date the individual applied for a payday loan.

"Small," as used in the definition of "payday loan" in § 6.1-444 of the Code of Virginia, means \$2,500 or less.

B. Other terms used in this chapter shall have the meaning set forth in § 6.1-444 of the Act.

**10VAC5-200-20. Requirements for licensees; operating rules; acquisitions.**

A. A licensee shall maintain unencumbered liquid assets per place of business in Virginia of at least \$25,000 at all times. The bureau may require submission of proof of maintenance of such liquid assets at any time.

B. Any person submitting an application to acquire, directly or indirectly, 25% or more of the voting shares of a corporation or 25% or more of the ownership of any other person licensed to conduct business under the Act shall pay a nonrefundable application fee of \$500.

C. Each original license shall be prominently posted in each place of business of the licensee. In order for a licensee to receive a replacement or reissued license, a licensee shall pay a fee of \$50 per place of business to the commission. Licenses will only be replaced or reissued if the licensee is in compliance with all laws and regulations applicable to the conduct of the licensee's business.

D. If a person has filed a bond with the bureau, as required by § 6.1-448 of the Code of Virginia, such bond shall be retained by the bureau notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered, suspended, or revoked; or
2. The person ceases engaging in business as a payday lender.

E. Upon becoming licensed, a licensee shall give written notice to the bureau of its commencement of business within 10 days thereafter.

F. For purposes of clause 1 (v) of § 6.1-459 of the Code of Virginia, the number of days in a borrower's pay cycle and the corresponding minimum loan term shall be determined by a licensee in accordance with the following:

1. If a borrower is paid on a weekly [ or more frequent ] basis, there are seven days in the borrower's pay cycle and the minimum loan term shall be 14 days.
2. If a borrower is paid on a biweekly basis, there are 14 days in the borrower's pay cycle and the minimum loan term shall be 28 days.
3. If a borrower is paid on a semimonthly basis, there are 15 days in the borrower's pay cycle and the minimum loan term shall be [ ~~30~~ 31 ] days.
4. If a borrower is paid on a monthly basis [ or a borrower's source of income for repayment of a loan is Social

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Security ], there are 30 days in the borrower's pay cycle and the minimum loan term shall be [ ~~60~~ 62 ] days.

5. If a borrower is paid either [ (i) ] less frequently than monthly [ , ] or [ (ii) ] on an irregular basis [ (e.g., self-employed), the number of days in a borrower's pay cycle shall be calculated by dividing 90 by the number of payments the borrower received within the past 90 days, rounded to the nearest whole number (e.g., 8.49 would be rounded to eight days and 8.50 would be rounded to nine days). The minimum loan term shall be calculated by multiplying the preceding result by two. However, in no event shall the minimum loan term for any borrower be less than 14 days (but less frequently than weekly), there are 30 days in the borrower's pay cycle and minimum loan term shall be 62 days ].

G. A licensee shall retain supporting documentation for a borrower's pay cycle in each loan file [ , which may consist of (i) a copy of a borrower's pay stub or similar periodic earnings statement that clearly reflects the borrower's pay cycle, or (ii) a representation by the borrower in the written loan application ].

H. A licensee shall not electronically debit a borrower's deposit account or otherwise obtain any funds from a borrower by electronic means, including the use of the Automated Clearing House network, electronic funds transfers, electronic check conversions, or re-presented check entries.

I. With the exception of the check given by a borrower to a licensee as security for a payday loan, a licensee shall not collect or receive from a borrower any interest or fees permitted by § 6.1-460 of the Code of Virginia, either in whole or in part, prior to the date of loan maturity unless the borrower is voluntarily making a full or partial prepayment pursuant to 10VAC5-200-40. If a borrower enters into an extended payment plan or extended term loan, a licensee shall not collect or receive any interest or fees, either in whole or in part, prior to the due date of a scheduled installment unless the borrower is voluntarily making a payment in advance.

J. The amount of the check given by a borrower to a licensee as security for a payday loan shall not exceed the sum of the principal amount advanced to the borrower and the interest and fees permitted by § 6.1-460 of the Code of Virginia. If a borrower enters into an extended payment plan at the time a loan is obtained, the amount of the check shall not include any interest.

K. [ ~~A~~ Upon satisfaction of a loan or upon learning that a loan has been satisfied, a ] licensee shall attach to each loan agreement [ ~~that has been satisfied~~ ] either (i) a copy of the signed and dated receipt for the payment that satisfied the loan or (ii) if a judgment was obtained and satisfied, a copy of the judgment marked satisfied.

L. Except as otherwise provided in subdivision B 2 of 10VAC5-200-33 or subdivision D 1 of 10VAC5-200-35, the check used to secure a payday loan shall be dated as of the date the loan is due. A licensee shall not deposit or otherwise present for payment a check given as security for a loan, including an extended term loan or a loan that a borrower elected to repay by means of an extended payment plan, prior to the date stated on the face of the check. [ A licensee shall not require or accept multiple checks or any additional or alternative security in connection with a payday loan. ]

M. If a borrower [ (i) cancels a loan in accordance with subsection G of 10VAC5-200-40, or (ii) repays [ ~~or otherwise satisfies~~ ] a loan in full with cash or good funds instrument [ and not with the check securing the loan ], the licensee shall [ immediately ] return the check given as security for the loan to the borrower [ ~~within three business days of repayment or satisfaction~~ ].

## **10VAC5-200-33. Extended payment plans.**

A. In any rolling 12-month period, an eligible borrower may elect to pay an outstanding payday loan from any licensee by means of an extended payment plan. A borrower shall not be eligible to obtain an extended payment plan if the borrower obtained an extended payment plan within the preceding 12 months.

B. A borrower may enter into an extended payment plan at any time on or after the date a loan is made through the date that the loan is due to be repaid. A borrower shall not be permitted to repay a past due payday loan by means of an extended payment plan. [ If a loan is past due and a borrower cannot obtain an extended payment plan, a licensee may voluntarily accept payments from a borrower in accordance with subsection H of 10VAC5-200-70. ]

1. If an eligible borrower elects an extended payment plan, a licensee shall permit the borrower to repay the amount owed in at least four equal installments over a term of at least 60 days. The dollar amount of each installment shall be the same and the installment due dates shall be spread out evenly over the term of the extended payment plan (e.g., if the term is 60 days and there are four installments, an installment shall be due every 15 days).

2. If a borrower enters into an extended payment plan on the date a loan is made, the check used to secure the loan shall be dated as of the date the final installment is due. A licensee shall not require or accept multiple checks or any additional or alternative security in connection with an extended payment plan. [ A borrower shall have the option of exchanging security checks with a licensee at the time the borrower makes a payment on an extended payment plan. If a borrower wishes to exchange security checks, a licensee shall upon receipt of the payment return the check held as security to the borrower and the borrower shall deliver to the licensee a replacement security check, dated

as of the date the final installment is due, for the remaining amount owed to the licensee. ]

3. A borrower who elects to repay a payday loan with an extended payment plan shall not be eligible for another payday loan until 90 days after the borrower has repaid or satisfied in full the balance of the loan.

C. A licensee shall provide notice to borrowers of the potential availability of the extended payment plan option in accordance with the provisions of this subsection.

1. A licensee shall conspicuously post in each licensed location a written notice in at least 24-point bold type informing borrowers that they may be eligible to enter into an extended payment plan. The minimum size for such written notice shall be 24 inches by 18 inches.

2. The title of the written notice, which shall appear in at least 48-point bold type, shall be "NOTICE – EXTENDED PAYMENT PLANS AVAILABLE TO ELIGIBLE BORROWERS AT NO ADDITIONAL COST."

3. The required text of the written notice shall be as follows:

[ ~~The Payday Loan Act gives eligible borrowers~~ If you are eligible, you have ] the option of repaying a payday loan by means of an extended payment plan. You may only obtain an extended payment plan once in any rolling 12-month period (even if you obtain loans from different lenders or locations). You may obtain an extended payment plan at any time on or after the date that you receive your loan through the date that your loan is due to be repaid. Under an extended payment plan, you will be permitted to repay the amount you owe in at least four equal installments over a term of at least 60 days. You will not be charged any additional interest or fees in connection with an extended payment plan, and interest will not accrue during the term of an extended payment plan. [ When you make a payment on an extended payment plan, you will have the option of providing a replacement security check for the remaining amount you owe. ] Please be advised that if you obtain an extended payment plan, you will not be permitted to get another payday loan from any lender for a period of 90 days after you fully repay or satisfy the extended payment plan.

4. If the payday lending database referred to in 10VAC5-200-110 advises a licensee that an applicant is eligible for an extended payment plan, the licensee shall immediately provide oral notice to the applicant that [ (i) ] the applicant is eligible to repay the payday loan through an extended payment plan [ ~~–The;~~ (ii) information about extended payment plans may be found on the poster in the licensee's office or in the "Borrower Rights and Responsibilities" pamphlet; and (iii) the licensee is available to answer any questions that the applicant may have about extended payment plans. When providing this notice, the ] licensee

shall also [ ~~read aloud to the applicant the text of the written notice as specified in subdivision C 3 of this section.~~ direct the applicant to the specific locations of both the poster referred to in subdivision 1 of this subsection and the section of the pamphlet entitled "Extended Payment Plans." ]

D. A licensee shall [ immediately ] give a borrower receipts, signed and dated by the licensee, for all payments made in connection with an extended payment plan. The receipts shall also state the loan balance due after each payment.

E. A licensee shall retain the written and signed extended payment plan document identifying the terms of the extended payment plan and provide the borrower with a duplicate original. A licensee shall also retain copies of receipts provided in accordance with subsection D of this section. Upon full repayment or satisfaction of an extended payment plan, a licensee shall mark both the original loan agreement and original extended payment plan document with the word "paid" or "canceled," return both items to the borrower, and retain copies in its loan records.

#### **10VAC5-200-35. Five payday loans within 180 days.**

A. A borrower obtaining a fifth payday loan within any rolling 180-day period may elect, at the option of the borrower, (i) to repay the loan through an extended payment plan, unless the borrower previously elected an extended payment plan within the preceding 12 months, or (ii) to obtain the loan in the form of an extended term loan.

B. If a borrower does not obtain an extended payment plan or extended term loan in connection with his fifth payday loan in 180 days, the borrower shall not be eligible for another payday loan until 45 days after the date the fifth payday loan is paid or otherwise satisfied in full.

C. If a borrower previously obtained an extended payment plan within the preceding 12-month period, the borrower shall not be eligible to repay a fifth payday loan obtained in any rolling 180-day period by means of an extended payment plan. However, if an eligible borrower elects to repay a fifth payday loan obtained in any rolling 180-day period by means of an extended payment plan, the provisions of 10VAC5-200-33 shall apply. A borrower who elects to repay such loan by means of an extended payment plan shall not be eligible for another payday loan until 90 days after the borrower has repaid or satisfied in full the balance of the loan.

D. The following provisions shall apply to extended term loans.

1. An extended term loan is a payday loan, as this term is defined in § 6.1-444 of the Code of Virginia. As with other payday loans, an extended term loan shall be secured by a check that does not exceed the sum of the principal amount advanced to the borrower and the interest and fees permitted by § 6.1-460 of the Code of Virginia. The check

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used to secure an extended term loan shall be dated as of the date the final installment is due. A licensee shall not require or accept multiple checks or any additional or alternative security in connection with an extended term loan. [ A borrower shall have the option of exchanging security checks with a licensee at the time the borrower makes a payment on an extended term loan. If a borrower wishes to exchange security checks, a licensee shall upon receipt of the payment return the check held as security to the borrower and the borrower shall deliver to the licensee a replacement security check, dated as of the date the final installment is due, for the remaining amount owed to the licensee. ]

2. If an eligible borrower elects an extended term loan, a licensee shall permit the borrower to repay the amount owed in four equal installments over a term of 60 days. The dollar amount of each installment shall be the same and the installment due dates shall be spread out evenly over the term of the extended term loan (i.e., an installment shall be due every 15 days).

3. The terms of an extended term loan shall be set forth in a written agreement signed and dated by the borrower. An eligible borrower may elect the extended term loan option only on the date a payday loan is made.

4. A borrower who obtains an extended term loan shall not be eligible for another payday loan during the longer of 90 days following the date the extended term loan is paid or otherwise satisfied in full, or 150 days following the date the extended term loan is obtained. Subject to one of the applicable waiting periods associated with a fifth loan in any rolling 180-day period, a borrower may be eligible for consecutive extended term loans or multiple extended term loans in any rolling 12-month period.

5. A licensee shall [ immediately ] give a borrower receipts, signed and dated by the licensee, for all payments made in connection with an extended term loan. The receipts shall also state the loan balance due after each payment.

6. A licensee shall retain the written and signed extended term loan agreement and provide the borrower with a duplicate original. A licensee shall also retain copies of receipts provided in accordance with subdivision 5 of this subsection. Upon full repayment or satisfaction of an extended term loan, a licensee shall mark the original extended term loan agreement with the word "paid" or "canceled," return it to the borrower, and retain a copy in its loan records.

E. A licensee shall provide notice to borrowers of the potential availability of the extended term loan option in accordance with the provisions of this subsection.

1. A licensee shall conspicuously post in each licensed location a written notice in at least 24-point bold type

informing borrowers that they may be eligible to obtain an extended term loan. The minimum size for such written notice shall be 24 inches by 18 inches.

2. The title of the written notice, which shall appear in at least 48-point bold type, shall be "NOTICE – EXTENDED TERM LOANS AVAILABLE TO BORROWERS OBTAINING A FIFTH PAYDAY LOAN WITHIN 180 DAYS."

3. The required text of the written notice shall be as follows:

The Payday Loan Act gives borrowers obtaining their fifth payday loan within 180 days the option to receive it in the form of an extended term loan. An extended term loan is a payday loan under which you are permitted to repay the amount you owe in four equal installments spread out evenly over a term of 60 days. You may obtain an extended term loan even if you previously obtained another extended term loan or an extended payment plan. If you want an extended term loan, you must choose this option on the date you obtain the payday loan. [ When you make a payment on an extended term loan, you will have the option of providing a replacement security check for the remaining amount you owe. ] Please be advised that if you obtain an extended term loan, you will not be permitted to get another payday loan from any lender for a period of 90 days after you fully repay or satisfy the extended term loan or 150 days after you obtain the extended term loan (whichever is longer). However, even if you do not choose an installment payment arrangement, you will still be unable to obtain another payday loan from any lender for a period of 45 days after you fully repay or satisfy your fifth payday loan.

4. If the payday lending database referred to in 10VAC5-200-110 advises a licensee that an applicant is eligible for an extended term loan, the licensee shall immediately provide oral notice to the applicant that [ (i) ] the applicant is eligible to obtain an extended term loan [ ~~The~~; (ii) information about extended term loans may be found on the poster in the licensee's office or in the "Borrower Rights and Responsibilities" pamphlet; and (iii) the licensee is available to answer any questions that the applicant may have about extended term loans. When providing this notice, the ] licensee shall also [ ~~read aloud to the applicant the text of the written notice as specified in subdivision 3 of this subsection.~~ direct the applicant to the specific locations of both the poster referred to in subdivision 1 of this subsection and the section of the pamphlet entitled "Five Payday Loans within 180 days." ] In addition, if the payday lending database advises a licensee that an applicant is eligible for an extended payment plan, the licensee shall also comply with subdivision C 4 of 10VAC5-200-33.

F. Payday loans made prior to January 1, 2009, shall not be considered for purposes of determining how many loans a borrower obtained in any rolling 180-day period.

**10VAC5-200-40. Borrower prepayment [; right to cancel].**

A. In order to prepay a payday loan in full, a borrower shall only be required to pay the principal amount advanced as well as any accrued and unpaid fees. A borrower shall be permitted to make partial payments, in increments of not less than \$5.00, on the loan at any time without charge. The licensee shall give the borrower signed, dated receipts for each payment made, which shall state the balance due on the loan.

B. For purposes of the Act and this chapter, the interest and fees will loan fee permitted by subsections A and B of § 6.1-460 of the Code of Virginia shall be deemed "accrued" on a straight line basis over the term of a payday loan. A licensee shall calculate interest charges using either a 360-day year or a 365-day year. The verification fee permitted by subsection C of § 6.1-460 of the Code of Virginia shall be deemed accrued in full at the time a payday loan is made.

C. 1. A borrower choosing to prepay his payday loan in full shall only be responsible for the verification fee and the pro-rata portion of the total interest and fees loan fee based upon the number of days which that have elapsed between the loan disbursement date and the date of repayment. (For example, if a \$400 loan with fees of \$60 and a term of 10 days a simple annual interest rate of 36%, a 20% loan fee, a \$5.00 verification fee, a term of 28 days, and a 360-day year is prepaid in full after five seven days, the borrower shall only be required to pay in cash or good funds instrument \$430 (\$400 + \$30) \$427.80 (\$400 + \$2.80 interest + \$20 loan fee + \$5.00 verification fee) to the licensee.)

2. A borrower choosing to make partial payments on a payday loan shall only be responsible for the verification fee and the pro-rata portion of the total interest and fees loan fee based upon the timing and amount of such partial payments. (For example, given a \$500 loan with fees of \$75 and a term of 10 days, a borrower making a partial payment of \$200 after five days shall only be required to pay a total of \$562.81 to the licensee (\$500 principal + \$62.81 interest (\$500 for five days = \$37.50, plus \$337.50 for five days = \$25.31)). In this example, \$37.50 of the borrower's \$200 partial payment would be applied toward interest and the remaining \$162.50 would be applied toward principal, thereby resulting in an outstanding balance of \$337.50 until maturity a simple annual interest rate of 36%, a 20% loan fee, a \$5.00 verification fee, a term of [ 30 31 ] days, and a 360-day year, a borrower making a partial payment of \$200 after 15 days shall only be required to pay a total of [ \$604.19 \$603.91 ] to the licensee (\$500 principal + [ \$104.19 \$103.91 ] interest and fees). In this example, [ \$62.50 \$60.89 ] of the borrower's

\$200 partial payment would be applied toward interest (\$7.50) and fees [ (\$50 (\$48.39 ) loan fee + \$5.00 verification fee) and the remaining [ \$137.50 \$139.11 ] would be applied toward principal, thereby resulting in an outstanding balance of [ \$362.50 \$360.89 ] until maturity. Based on this outstanding balance, the charges for the remainder of the term are [ \$5.44 \$5.77 ] (interest on [ \$362.50 \$360.89 ] for [ 15 16 ] days) + [ \$36.25 \$37.25 ] (loan fee on [ \$362.50 \$360.89 ] pro-rated for [ 15 16 ] days).

D. If a borrower enters into an extended payment plan and subsequently elects to prepay it in full, the borrower shall only be responsible for the verification fee, any interest that accrued prior to the borrower entering into the extended payment plan, and the pro-rata portion of the total loan fee based upon the number of days that have elapsed between the loan disbursement date and the date the loan would have been due if the borrower had not entered into the extended payment plan. The total payoff amount shall be reduced by the amount of any installment payments made by the borrower prior to prepaying the extended payment plan in full.

1. Example: Assume that a borrower who is paid on a [ ~~semi-monthly~~ semimonthly ] basis (minimum term of [ ~~30~~ 31 ] days) obtains a \$500 loan on April 1 with an extended payment plan, an extended payment plan term of 60 days, no interest (interest does not accrue during the term of an extended payment plan), a 20% loan fee, a \$5.00 verification fee, and installment payments of \$151.25 due on April 16, May 1, May 16, and May 31. Since the borrower is paid on a semimonthly basis, the loan fee shall accrue over a period of [ ~~30~~ 31 ] days. If the borrower prepays the extended payment plan in full on April 21, the borrower shall only be required to pay in cash or good funds instrument the principal (\$500), a pro-rata portion of the loan fee [ ~~(\$66.67)~~ (\$64.52) ], and the verification fee (\$5.00) for a total of [ ~~\$571.67~~ \$569.52 ] to the licensee. If the borrower made an installment payment of \$151.25 on April 16, the payoff amount on April 21 would be [ ~~\$420.42~~ (\$571.67 \$418.27 (\$569.52) ) = \$151.25).

2. Example: Assume that a borrower who is paid on a semimonthly basis obtains a \$500 loan on April 1 with a simple annual interest rate of 36%, a 20% loan fee, a \$5.00 verification fee, a term of [ ~~30~~ 31 ] days, and a 360-day year. Next assume that the borrower elects an extended payment plan on April 23 with a term of 60 days and installment payments of \$154 due on May 8, May 23, June 7, and June 22. If the borrower prepays the extended payment plan in full on June 2, the borrower shall only be required to pay in cash or good funds instrument the principal (\$500), the interest that accrued prior to the borrower electing an extended payment plan (\$11), the entire loan fee (\$100), and the verification fee (\$5.00) for a

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total of \$616 to the licensee. If the borrower made installment payments of \$154 on both May 8 and May 23, the payoff amount on June 2 would be \$308 (\$616 - \$154 - \$154).

E. If a borrower enters into an extended term loan and subsequently elects to prepay it in full, the borrower shall only be responsible for the verification fee and the pro-rata portion of the total interest and loan fee based upon the number of days that have elapsed between the loan disbursement date and the loan maturity date (i.e., the date the fourth installment is due). The total payoff amount shall be reduced by the amount of any installment payments made by the borrower prior to prepaying the extended term loan in full.

Example: Assume that a borrower obtains a \$500 extended term loan on April 1 with a simple annual interest rate of 36%, a 20% loan fee, a \$5.00 verification fee, a 360-day year, a 60-day term, and installment payments of \$158.75 due on April 16, May 1, May 16, and May 31. If the borrower prepays the extended term loan in full on May 20, the borrower shall only be required to pay in cash or good funds instrument the principal (\$500), the interest that accrued for 49 days (\$24.50), a pro-rata portion of the loan fee (\$81.67), and the verification fee (\$5.00) for a total of \$611.17 to the licensee. If the borrower made installment payments of \$158.75 on April 16, May 1, and May 16, the payoff amount on May 20 would be \$134.92 (\$611.17 - \$158.75 - \$158.75 - \$158.75).

F. Unless it results in the prepayment in full of an extended payment plan or extended term loan pursuant to subsection D or E of this section, a partial payment, excess payment, installment payment, or other payment received by a licensee in advance of the date the funds are due under the terms of the extended payment plan or extended term loan shall not result in a modification of the payment schedule or a pro-rata adjustment of the total interest, if any, or loan fee. Payments made by a borrower pursuant to an extended payment plan or extended term loan shall be first applied to any past due installment and then to the next regularly scheduled installment.

G. Notwithstanding any provision of this section, a borrower shall have the right to cancel a payday loan (including an extended term loan or a loan repayable by means of an extended payment plan) at any time before the close of business on the next business day following the date of the loan by paying to the licensee, in the form of cash or good funds instrument, the principal amount advanced to the borrower. The licensee shall not be entitled to charge or receive any interest or fees, including a verification fee, when a borrower cancels a payday loan.

## **10VAC5-200-60. Posting of charges.**

A. A licensee shall conspicuously post in its licensed location a schedule of payments, fees and interest charges,

with examples using (i) a \$300 loan payable in ~~seven days~~, 14 days, ~~and~~; (ii) a \$300 loan payable in [ ~~30~~ 31 ] days; (iii) a \$300 loan payable in [ ~~60~~ 62 ] days; (iv) a \$300 loan payable through an extended payment plan that is elected on the date the loan is obtained; (v) a \$300 loan payable through an extended payment plan that is elected on the 15th day of a [ ~~30-day~~ 31-day ] term; and (vi) a \$300 extended term loan.

B. A licensee shall display its fees and interest charges not only as a dollar amount, but also as an Annual Percentage Rate, which shall be stated using this term, calculated in accordance with Federal Reserve Board Regulation Z (12 CFR 226.1 et seq.).

## **10VAC5-200-70. Additional business requirements and restrictions.**

A. A licensee shall conspicuously post in its licensed locations the days and hours during which it is open for business.

B. A licensee shall not deposit or otherwise present for payment more than two times any check given by a borrower as security for a loan, and in no event shall a licensee recover from a borrower more than a total of \$25 attributable to returned check fees incurred by the licensee with respect to a single check.

~~C. A licensee shall not accept or require an allotment of military pay or any authorization of electronic funds transfer as security for repayment of a loan. A licensee shall not knowingly make a payday loan to a member of the military services of the United States, or the spouse or other dependent of a member of the military services of the United States. To enable a licensee to make this determination, a licensee shall clearly and conspicuously include the following questions in its written loan application, which the licensee shall require each applicant to answer before obtaining a payday loan [ . A licensee shall not make a payday loan to an applicant unless the applicant answers "no" to all of these questions ]:~~

1. Are you a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, [ ~~or~~ ] Coast Guard, [ or National Guard ] serving on active duty under a call or order that does not specify a period of 30 days or fewer?

2. Are you married to a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, [ ~~or~~ ] Coast Guard, [ or National Guard ] serving on active duty under a call or order that does not specify a period of 30 days or fewer?

3. Are you under the age of 18 and the son or daughter of a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, [ ~~or~~ ] Coast Guard, [ or National Guard ] serving on active duty under a call or order that does not specify a period of 30 days or fewer?

4. Was more than one-half of your financial support for the past 180 days provided by a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, [ ~~or~~ ] Coast Guard, [ or National Guard ] serving on active duty under a call or order that does not specify a period of 30 days or fewer?

D. A licensee shall maintain in its licensed offices such books, accounts, and records as the Commissioner of Financial Institutions may reasonably require in order to determine whether such licensee is complying with the provisions of the Act and all rules and regulations adopted in furtherance thereof. Such books, accounts, and records shall be maintained apart and separate from those relating to any other business in which the licensee is involved. Such records relating to loans, including loan applications, shall be retained for at least three years after final payment is made on any loan.

E. A licensee shall report, in accordance with § 6.1-455 of the Code of Virginia, the institution of an action against the licensee under the Virginia Consumer Protection Act (§ 59.1-196 et seq. of the Code of Virginia) by the Attorney General or any other governmental authority.

F. A licensee shall endeavor to provide the loan documents, printed notice, and pamphlet required by 10VAC5-200-30, in a language other than English when a prospective borrower is unable to read the materials printed in English.

G. A licensee shall not file or initiate a legal proceeding against a borrower until 60 days after the date of default on a payday loan, including defaults under extended payment plans or extended term loans, during which time the licensee and borrower may voluntarily enter into a repayment arrangement.

H. Nothing in the Act or this chapter shall be construed to prohibit a licensee from voluntarily accepting a payment on an outstanding loan from a borrower after the date that such payment was due to the licensee. However, except as otherwise permitted by the Act and this chapter, the licensee shall not collect, receive, or otherwise recover any additional interest, fees, or charges from the borrower.

**10VAC5-200-80. Payday lending pamphlet text.**

The required text of the payday lending pamphlet referred to in 10VAC5-200-30 is as follows:

**PAYDAY LENDING IN THE COMMONWEALTH OF VIRGINIA**

**BORROWER RIGHTS AND RESPONSIBILITIES**

Please take the time to carefully review the information contained in this pamphlet. It is designed to advise you of your rights and responsibilities in connection with obtaining a payday loan in Virginia under the Payday Loan Act, § 6.1-444 et seq. of the Code of Virginia. If you have any questions

about payday lending or want additional information, you may contact the Virginia State Corporation Commission's Bureau of Financial Institutions toll-free at (800) 552-7945 or on the Internet at <http://www.scc.virginia.gov/division/banking> <http://www.scc.virginia.gov/bfi>. The Bureau of Financial Institutions has available a "Consumer Guide to Payday Lending" that may be viewed at this website or obtained by calling the toll-free telephone number listed above.

**In General:** You are responsible for evaluating whether a payday loan is right for you. Alternatives may include among other things less expensive short-term financing from another financial institution, family, or friends, a cash advance on a credit card, an account with overdraft protection, or a loan repayable over several months.

**Notice from Lender:** The lender is required to provide you with a clear and conspicuous printed notice advising you that a payday loan is not intended to meet long-term financial needs and that you should use a payday loan only to meet occasional or unusual short-term cash needs.

**Payday Lending Database:** Before making a payday loan to you, a lender is required by Virginia law to access a database that contains detailed information about payday loans made to Virginia residents by all lenders licensed to do business in Virginia. The database will inform the lender whether you are eligible for a payday loan. If you are ineligible for a payday loan, the lender will provide you with the toll-free telephone number of the database provider, which you can use to find out the specific reason for your ineligibility. To enable the lender to check the database, you will be required to provide the lender with your original driver's license or [ ~~DMV Identification Card~~ identification card issued by a state driver's licensing authority (e.g., Department of Motor Vehicles for the Commonwealth of Virginia) ]. If you wish to obtain a payday loan but do not have a driver's license or [ ~~DMV Identification Card~~ identification card ], you will need to obtain a driver's license or [ ~~DMV Identification Card~~ identification card ] from the [ ~~Department of Motor Vehicles~~ driver's licensing authority in your home state ].

**Prohibition on Loans to Individuals with Certain Previous or Outstanding Loans:** Virginia law prohibits a lender from making a payday loan to you if (i) you currently have an outstanding payday loan; (ii) you paid or satisfied in full a previous payday loan on the same day that you are applying for a new payday loan; (iii) in the past 90 days you paid or satisfied in full a previous payday loan by means of an extended payment plan; (iv) in the past 45 days you paid or satisfied in full a fifth payday loan that you obtained within a period of 180 days; (v) in the past 90 days you paid or satisfied in full an extended term loan; or (vi) in the past 150 days you entered into an extended term loan.

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It is important to note that the previous or outstanding payday loans referred to above include loans made by the same lender as well as any other lender conducting payday lending business in Virginia.

**Prohibition on Loans to Members of the Military and their Spouses and Dependents:** Virginia law prohibits lenders from making payday loans to members of the military services of the United States as well as their spouses and dependents. If you are a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, [ or ] Coast Guard, [ or National Guard ] serving on active duty under a call or order that does not specify a period of 30 days or fewer, the lender is prohibited from making a payday loan to you. The lender is also prohibited from making a loan to you if (i) you are married to such a member, (ii) you are less than 18 years old and the son or daughter of such a member, or (iii) more than one-half of your financial support for the past 180 days was provided by such a member.

**Limitations on Security Interest / Prohibition on Obtaining Funds Electronically:** The lender cannot require you to provide more than one check as security for any payday loan. The check cannot be post-dated must be dated as of the date your loan is due. The lender cannot require you to provide any security for your payday loan other than a check payable to the lender. The lender is also prohibited from electronically debiting your deposit account or obtaining any of your funds by electronic means.

**One Loan at a Time / \$500 Maximum/Seven-Day Minimum Term Maximum:** The lender cannot have loans (either single or in the aggregate) more than one loan outstanding to you at any one time in the principal amount of more than. If you currently have an outstanding payday loan from any lender, you cannot obtain another payday loan. The maximum loan amount is \$500. By law, the specified due date of your loan must be at least seven days after the date that money is advanced to you.

**Minimum Loan Term:** Under Virginia law, your loan term must be at least twice as long as your pay cycle. For example, if you are paid on a weekly basis, your minimum loan term would be 14 days.

**Fees, Charges, and Interest:** The lender is permitted to charge you (i) interest in the form of at a simple annual rate of 36%, (ii) a loan fee not exceeding 15% 20% of the amount of money advanced to you (i.e., \$15 \$20 per \$100 advanced), and (iii) a verification fee not exceeding \$5.00. For example, if the lender advances you \$300 for seven days, the lender may charge you up to \$45 as a fee for obtaining the loan (an Annual Percentage Rate of 782%). If the lender advances you \$300 for 14 [ 30 31 ] days, the lender may charge you up to the same \$45 fee for obtaining the loan [ \$9.00 \$9.30 ] interest, a loan fee of \$60, and a verification fee of \$5.00 for a total of [ \$74 (an Annual Percentage Rate of 391%) 296%] \$74.30 ]. If the lender advances you \$300 for 30 [ 60 62 ]

days, the lender may charge you up to the same \$45 fee for obtaining the loan [ \$18 \$18.60 ] interest, a loan fee of \$60, and a verification fee of \$5.00 for a total of [ \$83 (an Annual Percentage Rate of 183%) 166%] \$83.60 ]. Other than the specific fees and costs discussed in the section of this pamphlet entitled "Failure to Repay" (see below), no additional amounts may be directly or indirectly charged, contracted for, collected, received, or recovered by the lender.

You will receive your loan proceeds in the form of either cash or a check from the lender. The lender cannot charge you a fee for cashing their check. Similarly, a check casher affiliated with the lender cannot charge you a fee for cashing the lender's check.

**Written Agreement:** The lender must provide you with a written loan agreement, which must be signed by both you and an authorized representative of the lender. The loan agreement is a binding, legal document that requires you to repay the loan. Make sure you read the entire loan agreement carefully before signing and dating it. The lender must provide you with a duplicate original of the loan agreement at the time of your loan transaction. If any provision of your loan agreement violates the Payday Loan Act (§ 6.1-444 et seq. of the Code of Virginia), the provision will not be enforceable against you.

**Extended Payment Plans:** Under Virginia law eligible borrowers have the option of repaying a payday loan by means of an extended payment plan. You may only obtain an extended payment plan once in any rolling 12-month period (even if you obtain loans from different lenders or locations). You may obtain an extended payment plan at any time on or after the date that you received your loan through the date that your loan is due to be repaid.

Under an extended payment plan, you are permitted to repay the amount you owe in at least four equal installments spread out evenly over a term of at least 60 days. You will not be charged any additional interest or fees in connection with an extended payment plan, and interest will not accrue during the term of an extended payment plan.

If you obtain an extended payment plan, you will not be able to get another payday loan from any lender for a period of 90 days after you fully repay or satisfy the extended payment plan.

**Five Payday Loans within 180 [ days Days ]:** If you are obtaining a fifth payday loan within a rolling 180-day period, you have the option to (i) repay the fifth loan through an extended payment plan, unless you previously obtained an extended payment plan within the preceding 12 months, or (ii) obtain the loan in the form of an extended term loan.

You do not have to choose either one of these options. However, even if you do not obtain an extended payment plan or extended term loan, you will not be able to obtain another

payday loan from any lender for a period of 45 days after you fully repay or satisfy your fifth payday loan.

Extended payment plans are discussed above. If you are eligible to repay your fifth payday loan by means of an extended payment plan and choose to do so, you will not be able to obtain another payday loan from any lender for a period of 90 days after you fully repay or satisfy the extended payment plan.

An extended term loan is a payday loan under which you are permitted to repay the amount you owe in four equal installments spread out evenly over a term of 60 days. You may obtain an extended term loan even if you previously obtained another extended term loan or an extended payment plan. If you want an extended term loan, you must choose this option on the date you obtain the payday loan. If you obtain an extended term loan, you will not be able to get another payday loan from any lender for a period of 90 days after you fully repay or satisfy the extended term loan or 150 days after you obtain the extended term loan (whichever is longer).

**Other Businesses:** A lender is prohibited by statute from engaging in other businesses, besides check cashing, unless permitted by order of the State Corporation Commission. A lender is also prohibited by statute from selling you any type of insurance coverage.

**Loans for Other Products & Services:** You are prohibited from using any of the money from your payday loan to purchase any other product or service sold at the lender's business location.

**Right to Cancel:** You have the right to cancel your loan at any time prior to the close of business on the next day the lender is open following the date your loan is made by paying the lender the amount advanced to you in cash, certified check, cashier's check, money order or, if the lender is equipped to handle such payments, by using a credit [ ~~or debit~~ ] card.

**Partial Payments and Prepayments:** You have the right to make partial payments (in increments of not less than \$5.00) on your payday loan at any time prior to its specified due date without ~~charge~~ penalty. If you make a partial payment, the total interest and loan fee you pay will be reduced (unless you have an extended payment plan or extended term loan -- see "Payments on Extended Payment Plans and Extended Term Loans" below). You have the right to receive signed, dated receipts for each payment made along with a statement of the balance remaining on your payday loan. You also have the right to prepay your loan in full before its specified due date without penalty by paying the lender in cash, certified check, cashier's check, money order or, if the lender is equipped to handle such payments, by use of a credit [ ~~or debit card~~ ], the amount of money advanced to you as well as any accrued and unpaid interest and fees.

**Payments on Extended Payment Plans and Extended Term Loans:** You have the right to prepay an extended payment plan or extended term loan without penalty. However, unless it results in the prepayment in full of an extended payment plan or extended term loan, a partial payment, excess payment, installment payment, or other payment you give to the lender in advance of the date the funds are due does not result in either a change to your payment schedule or a pro-rata adjustment of the total interest, if any, or loan fee that you will be required to pay. Payments you make on an extended payment plan or extended term loan are first applied to any past due installment and then to your next regularly scheduled installment. The lender must give you receipts, signed and dated by the lender, for all payments you make on an extended payment plan or extended term loan. [ When you make a payment on an extended payment plan or extended term loan, you have the option to give the lender a replacement security check for the remaining amount you owe. ]

**Lender to Return Original Loan Agreement:** Upon repayment of your loan in full, the lender must mark your original loan agreement with the word "paid" or "canceled" and return it to you. If you obtained an extended payment plan, the lender is also required to mark your original extended payment plan document with the word "paid" or "canceled" and return it to you.

**[ Lender to Return Security Check:** If you cancel your loan (see "Right to Cancel" above) or repay it in full with cash or by certified check, cashier's check, money order or, if the lender is equipped to handle such payments, by using a credit card, the lender must immediately return the check you gave as security for the loan. ]

**No Rollovers, Extensions, Etc.:** The lender cannot refinance, renew, extend, or rollover your payday loan.

**Failure to Repay:** Pay back your loan! Know when your payment is due and be sure to repay your loan on time and in full. You are responsible for having sufficient funds in your checking account on the due date of your loan so that your check does not bounce if the lender deposits it in his account. If you do not repay your loan by the specified due date, the lender may begin accruing interest on the principal amount of your loan at a maximum rate of [ ~~6%~~ 6.0% ] per year.

In collecting or attempting to collect a payday loan, the lender is required to comply with the restrictions and prohibitions applicable to debt collectors contained in the Fair Debt Collection Practices Act, 15 USC § 1692 et seq., regarding harassment or abuse, false or misleading misrepresentations, and unfair practices in collections. The lender is also prohibited from threatening or beginning criminal proceedings against you if a check you provide to the lender bounces. If a lender knowingly violates this prohibition, the lender is required to pay you a civil monetary

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penalty equal to three times the amount of the dishonored check.

If you cannot or do not repay the loan: (i) the lender is permitted to recover from you any fee charged to the lender (maximum of \$25) as a result of your check being returned due to your account being closed by you or containing insufficient funds, or if you stopped payment on your check; and (ii) if the lender seeks and obtains judgment against you as a result of your returned check, the lender may obtain court costs and reasonable attorney's fees (total may not exceed \$250) if such costs and fees are awarded by the court.

The lender cannot file or initiate a legal proceeding against you until 60 days after the date that you default on a payday loan, including a default under an extended payment plan or extended term loan. During this 60-day period the lender may voluntarily enter into a repayment arrangement with you.

**Legal Action Against Lender:** You have the right to bring a civil action against the lender if you suffer a loss as a result of the lender violating any provision of the Payday Loan Act. If you are successful in your civil action, you have the right to be reimbursed for reasonable attorney's fees, expert witness fees, and court costs you have incurred in connection with your civil action. Losses suffered as the result of the lender's violation of the Payday Loan Act may also be pursued under the Virginia Consumer Protection Act (§ 59.1-196 et seq. of the Code of Virginia), which in some cases permits consumers to recover actual and punitive damages.

~~**Additional Protections for Borrowers in the Military/Borrowers Married to Members of the Military:** If you or your spouse is a member of the United States military, the lender is prohibited by law from (i) garnishing any military wages or salary; (ii) conducting any collection activity against you if you or your spouse is deployed to a combat or combat support posting or is a member of the Reserves or National Guard and called to active duty, for the duration of the deployment or active duty service; (iii) contacting your commanding officer or your spouse's commanding officer, or anyone in your chain of command or your spouse's chain of command, in an effort to collect a loan made to you; (iv) disregarding the terms of a loan repayment agreement that the lender negotiates through military counselors or third party credit counselors; and (v) making a loan to you if a military base commander has declared that a specific location of the lender's business is off limits to military personnel.~~

**Complaints and Contacting the Bureau of Financial Institutions:** For assistance with any complaints you may have against a payday lender, please contact the Bureau of Financial Institutions toll free at (800) 552-7945 or on the Internet at <http://www.scc.virginia.gov/division/banking> <http://www.scc.virginia.gov/bfi>. Complaints must be filed in writing with the Bureau of Financial Institutions. Complaints should be mailed to Bureau of Financial Institutions, Attn:

Complaints, P.O. Box 640, Richmond, Virginia 23218-0640, or faxed to Bureau of Financial Institutions, Attn: Complaints, at (804) 371-9416.

## **10VAC5-200-110. Payday lending database.**

A. This section sets forth the rules applicable to the payday lending database referred to in § 6.1-453.1 of the Code of Virginia.

B. Except as otherwise provided in this section, a licensee shall transmit all information to the database via the Internet. In order to maintain the confidentiality and security of the information, a licensee shall not transmit information to the database using publicly accessible computers, computers that are not under the licensee's control, unsecured wireless (Wi-Fi) connections, or other connections that are not secure. A licensee shall maintain generally accepted security safeguards to protect the confidentiality of the information transmitted to the database, including but not limited to installing and regularly updating malware protection (antivirus and antispyware) software and a firewall.

C. Prior to making a payday loan, a licensee shall transmit the following information to the database for purposes of determining whether an applicant is eligible for a payday loan. The licensee shall obtain the applicant information required by this subsection in accordance with the provisions of subsection D of this section.

1. Name of licensee and license number.
2. Office location of licensee.
3. [ ~~Name~~ First and last name or identification number ] of employee entering information into the database.
4. Applicant's first and last name.
5. Last four digits of applicant's driver's license number or [ ~~DMV Identification Card~~ identification card ] number.
6. Applicant's address.
7. [ ~~Whether the applicant is a member of the military services of the United States, or the spouse or other dependent of a member of the military services of the United States~~ Applicant's date of birth ].

D. 1. A licensee shall obtain the information required by subdivisions C 4, 5, [ ~~and~~ ] 6 [ , and 7 ] of this section directly from the applicant's unexpired original driver's license or [ ~~DMV Identification Card~~ identification card issued by a state driver's licensing authority (e.g., Department of Motor Vehicles for the Commonwealth of Virginia) ], regardless of whether the information on the driver's license or [ ~~DMV Identification Card~~ identification card ] is still accurate. A licensee shall not accept photocopies, facsimiles, or other reproductions of a driver's license or [ ~~DMV Identification Card~~ identification card ].

2. A licensee shall photocopy the applicant's driver's license or [ ~~DMV Identification Card~~ identification card, partially redact the driver's license number or identification card number so that only the last four digits of the number remain visible, ] and retain the [ redacted ] photocopy in its records.

3. A licensee shall not accept a driver's license or [ ~~DMV Identification Card~~ identification card ] from an applicant when there is reason to believe that (i) it belongs to an individual other than the applicant or (ii) it is fake, counterfeit, or has been altered, fraudulently obtained, forged, or is otherwise nongenuine or illegitimate.

E. If the database advises a licensee that an applicant is ineligible for a payday loan, then the licensee shall inform the applicant of his ineligibility, instruct the applicant to contact the database provider for information about the specific reason for his ineligibility, and provide the applicant with the toll-free telephone number of the database provider.

F. If the database advises a licensee that an applicant is eligible for a payday loan, then the licensee shall transmit the following additional information to the database prior to making a payday loan:

1. Application date.
2. Loan number.
3. Date of loan.
4. Principal amount of loan.
- [ ~~5. Source of income for repayment of loan (employment or Social Security).~~ ]
- [ ~~6. 5. ] Interest rate.~~
- [ ~~7. 6. ] Dollar amount of interest to be charged until date of loan maturity.~~
- [ ~~8. 7. ] Dollar amount of loan fee to be charged.~~
- [ ~~9. 8. ] Dollar amount of verification fee to be charged.~~
- [ ~~10. 9. ] Dollar amount of total finance charges.~~
- [ ~~11. 10. ] Annual [ percentage rate ] (APR) of loan.~~
- [ ~~12. 11. ] Number of days in applicant's pay cycle.~~
- [ ~~13. 12. ] Number of days in loan term.~~
- [ ~~14. 13. ] Date loan is due.~~
- [ ~~15. 14. ] Dollar amount of check given by applicant to secure the loan [ i.e., at the time the loan is made ].~~

G. If the database advises a licensee that an applicant is eligible for an extended payment plan or extended term loan and the applicant subsequently elects an extended payment plan or extended term loan, then the licensee shall transmit the following additional applicable information to the database no later than the time the licensee closes for business

on the date the applicant enters into the extended payment plan or extended term loan:

1. Date the extended payment plan or extended term loan is entered into.
2. Principal amount owed under the extended payment plan or extended term loan.
3. Number of installment payments and the amount of each payment to be made under the extended payment plan or extended term loan.
4. Date each installment payment is due under the extended payment plan or extended term loan.
5. Number of days in term of extended payment plan or extended term loan.

H. For purposes of this section, a licensee closes for business when it officially shuts its doors to the general public on a business day, or within one hour thereafter.

I. A licensee shall generate a separate printout from the database showing the results of each loan eligibility query, including whether an applicant is eligible for an extended payment plan or extended term loan, and retain the printout in its loan records.

J. Except as otherwise provided in [ ~~subdivision subdivisions~~ ] 3 [ , 7, and 8 ] of this subsection, a licensee shall transmit the following additional information, as applicable, to the database no later than the time the licensee closes for business on the date of the event:

1. If a borrower cancels a payday loan, the date of the cancellation.
2. If a payday loan (including an extended term loan or a loan that a borrower elected to repay by means of an extended payment plan) is repaid or otherwise satisfied in full, (i) the date of repayment or satisfaction, [ and ] (ii) [ ~~the method of repayment or satisfaction (e.g., cash, good funds instrument, check given to licensee as security for loan, other personal check, etc.), and (iii) ] the total net dollar amount ultimately paid by the borrower in connection with the loan (i.e., principal amount of loan plus all fees and charges received or collected pursuant to §§ 6.1-460 and 6.1-461 of the Code of Virginia, less any amount refunded to the borrower as a result of overpayment).~~
3. If a check used to repay a loan in full is returned unpaid, the date the check is returned unpaid and the dollar amount of the check. A licensee shall transmit such information to the database no later than five calendar days after the date the check is returned unpaid.
4. If a licensee collects a returned check fee from a borrower, the dollar amount of the returned check fee.

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5. If a licensee initiates a legal proceeding against a borrower for nonpayment of a payday loan, the date the proceeding is initiated and the total dollar amount sought to be recovered.

6. If a licensee obtains a judgment against a borrower, the date and total dollar amount of the judgment.

[ 7. If a judgment obtained by a licensee against a borrower is satisfied, the date of satisfaction. A licensee shall transmit such information to the database on the date the licensee learns that the judgment has been satisfied. ]

[ ~~7.~~ 8. ] If a licensee collects any court costs or attorney's fees from a borrower, the dollar amount of the court costs or attorney's fees. [ A licensee shall transmit such information to the database on the date the licensee learns that the court costs or attorney's fees have been paid. ]

[ ~~8.~~ 9. ] If a licensee charges off a payday loan as uncollectible, the date the loan is charged off and the total dollar amount charged off.

K. 1. If any information required to be transmitted by a licensee to the database is automatically populated or calculated by the database provider, the licensee shall verify the information and immediately correct any inaccuracies or other errors.

2. If a licensee becomes aware of any changes, inaccuracies, or other errors in the information previously verified or transmitted by the licensee to the database, the licensee shall immediately update or correct the database.

L. The following provisions address a licensee's inability to access the database at the time of loan application:

1. If at the time a licensee receives a loan application the licensee is unable to access the database due to technical problems beyond the licensee's control, the licensee shall contact the database provider's call center and request that the call center enter the information required by this section and query the database on the licensee's behalf. The licensee shall document in its records the technical problems it experienced, the specific information it provided to the call center, the result of each query (including the applicant's eligibility for an extended payment plan or extended term loan), the date and time of the phone call, and the first and last name [ or identification number ] of the person in the call center who provided the results of the query to the licensee.

2. If at the time a licensee receives a loan application the licensee is unable to access the database due to technical problems beyond the licensee's control and the database provider's call center is either closed or also unable to access the database, then the licensee may make a payday loan to an applicant if the applicant signs and dates a separate document containing all of the representations and responses to the questions set forth below and the

prospective loan otherwise complies with the provisions of the Act and this chapter. The document shall be printed in a type size of not less than 14 point and contain a statement that the representations and questions relate to loans obtained from either the licensee or another payday lender. The licensee shall retain the original document in its loan file and provide the applicant with a duplicate original. The licensee shall also document in its records the technical problems it experienced and the date and time that it sought to query the database.

a. The representations to be made by an applicant are as follows:

(1) I do not currently have any outstanding payday loans.

(2) I did not repay or otherwise satisfy in full a payday loan today.

(3) In the past 90 days I did not repay or otherwise satisfy in full a payday loan by means of an extended payment plan.

(4) In the past 45 days I did not repay or otherwise satisfy in full a fifth payday loan that was obtained within a period of 180 days.

(5) In the past 90 days I did not repay or otherwise satisfy in full an extended term loan.

(6) I did not obtain an extended term loan within the past 150 days.

(7) I am not a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, [ ~~or~~ ] Coast Guard, [ or National Guard ] serving on active duty under a call or order that does not specify a period of 30 days or fewer.

(8) I am not married to a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, [ ~~or~~ ] Coast Guard, [ or National Guard ] serving on active duty under a call or order that does not specify a period of 30 days or fewer.

(9) I am not under the age of 18 and the son or daughter of a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, [ ~~or~~ ] Coast Guard, [ or National Guard ] serving on active duty under a call or order that does not specify a period of 30 days or fewer.

(10) One-half or less (including none) of my financial support for the past 180 days was provided by a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, [ ~~or~~ ] Coast Guard, [ or National Guard ] serving on active duty under a call or order that does not specify a period of 30 days or fewer.

b. The questions to be presented to an applicant are as follows:

(1) In the past 12 months, have you obtained an extended payment plan in order to repay a payday loan? If the applicant's response is "no" and the applicant is eligible for a payday loan, then the licensee shall immediately ~~[ provide oral notice to the applicant that the applicant is eligible to repay the payday loan through an extended payment plan. The licensee shall also read aloud to the applicant the text of the written notice as specified in ]~~ provide the applicant with the oral notice prescribed in  ~~]~~ subdivision C [  ~~3 4 ]~~ of 10VAC5-200-33.

(2) Have you obtained four or more payday loans within the past 180 days? If the applicant's response is "yes" and the applicant is eligible for a payday loan, then the licensee shall immediately ~~[ provide oral notice to the applicant that the applicant is eligible to obtain an extended term loan. The licensee shall also read aloud to the applicant the text of the written notice as specified in ]~~ provide the applicant with the oral notice prescribed in  ~~]~~ subdivision E [  ~~3 4 ]~~ of 10VAC5-200-35.

3. If a licensee makes a payday loan based upon an applicant's written representations and responses, then the licensee shall transmit the information required by this section to the database no later than the time the licensee closes for business on the date the database becomes accessible to the licensee, either directly or through the database provider's call center.

M. The following provisions address a licensee's inability to access the database subsequent to loan application:

1. If a licensee is required to transmit to the database information regarding a loan that has already been made, but the licensee is unable to access the database due to technical problems beyond the licensee's control, then the licensee shall contact the database provider's call center and request that the call center enter the information required by this section on the licensee's behalf. The licensee shall document in its records the technical problems it experienced, the specific information it provided to the call center, the date and time of the phone call, and the first and last name ~~[ or identification number ]~~ of the person in the call center who entered the information on the licensee's behalf.

2. If a licensee is required to transmit to the database information regarding a loan that has already been made, but the licensee is unable to access the database due to technical problems beyond the licensee's control and the database provider's call center is closed or also unable to access the database, then the licensee shall transmit to the database the information required by this section no later than the time the licensee closes for business on the date the database becomes accessible to the licensee, either directly or through the database provider's call center. The licensee shall also document in its records the technical

problems it experienced and the date and time that it sought to transmit the information to the database.

~~[ N. By the close of business on each business day, a licensee shall transmit to the database the total daily number (even if 0) of individuals who were unable to obtain payday loans from the licensee because they are members of the military services of the United States or the spouses or other dependents of members of the military services of the United States. If the licensee is unable to access the database due to technical problems beyond the licensee's control, then the licensee shall transmit to the database the information required by this subsection no later than the time the licensee closes for business on the next business day that the licensee is able to access the database. The licensee shall also document in its records the technical problems it experienced and the date and time that it sought to transmit the information to the database. ]~~

~~[ N. O. ]~~ A licensee shall have limited access to the information contained in the database. The database shall only provide a licensee with the following information: (i) whether an applicant is eligible for a new payday loan; (ii) if an applicant is ineligible for a new payday loan, the general reason for the ineligibility (e.g., the database may state that the applicant has an outstanding payday loan but it shall not furnish any details regarding the outstanding loan); and (iii) if an applicant is eligible for a new payday loan, whether the applicant is also eligible for an extended payment plan or extended term loan. ~~[ The database shall also permit a licensee to access information that the licensee is required to transmit to the database provided that such access is for the sole purpose of verifying, updating, or correcting the information. ]~~ Except as ~~[ otherwise ]~~ provided in this subsection, a licensee shall be prohibited from accessing or otherwise obtaining any information contained in or derived from the database.

~~[ O. P. ]~~ If the Commissioner of Financial Institutions determines that a licensee has ceased business but still has one or more outstanding payday loans that cannot be repaid due to the licensee's closure, the Commissioner of Financial Institutions may authorize the database provider to mark the outstanding loans as satisfied in the database in order to enable the affected borrowers to obtain payday loans in the future.

~~[ P. Q. ]~~ 1. Except as provided in subsection F of 10VAC5-200-35, payday loans made on or after October 1, 2008, and prior to January 1, 2009, that remain outstanding on January 1, 2009, shall be considered for purposes of determining a borrower's eligibility for a payday loan. Accordingly, on or before January 1, 2009, a licensee shall transmit the following information to the database in connection with every payday loan made on or after October 1, 2008, that will or may be outstanding as of January 1, 2009:

a. Name of licensee and license number.

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b. Office location of licensee.

c. [ Name First and last name or identification number ]  
of employee entering information into the database.

d. Borrower's first and last name.

e. Last four digits of borrower's driver's license number  
or [ ~~DMV Identification Card~~ identification card ]  
number.

f. Borrower's address.

[ g. Borrower's date of birth. ]

[ ~~g. h.~~ ] Date loan funds were disbursed.

[ ~~h. i.~~ ] Date loan is due.

2. A licensee shall obtain and retain the borrower information required by this subsection in accordance with the provisions of subsection D of this section.

3. For every payday loan made on or after October 1, 2008, that remains outstanding as of January 1, 2009, a licensee shall transmit to the database all applicable information required by subsection J of this section [ ~~by within~~ ] the time [ ~~the licensee closes for business on the date of the event~~ prescribed therein ] or January 1, 2009, whichever is later.

## **10VAC5-200-120. Enforcement.**

A. Failure to comply with any provision of the Act or this chapter may result in fines, license suspension, or license revocation.

B. Pursuant to § 6.1-467 of the Code of Virginia, a licensee shall be subject to a separate fine of up to \$1,000 for every violation of the Act, this chapter, or other law or regulation applicable to the conduct of the licensee's business. If a licensee violates any provision of the Act, this chapter, or other law or regulation applicable to the conduct of the licensee's business in connection with multiple loans or borrowers, the licensee shall be subject to a separate fine for each loan or borrower. For example, if a licensee makes five loans and the licensee violates two provisions of this chapter that are applicable to the five loans, the licensee shall be subject to a maximum fine of \$10,000.

C. If a licensee (i) fails to transmit information to the payday lending database in accordance with the Act or 10VAC5-200-110, (ii) transmits incorrect information to the database, or (iii) transmits information to the database in an untimely manner, the licensee shall be subject to a separate fine under § 6.1-467 of the Code of Virginia for each item of data that is omitted, incorrect, or untimely. For example, if a licensee makes three loans and fails to transmit two items of information to the database in connection with each of the three loans, the licensee shall be subject to a maximum fine of \$6,000.

VA.R. Doc. No. R08-1380; Filed October 7, 2008, 3:26 p.m.

## **STATE CORPORATION COMMISSION**

### **Final Regulation**

**REGISTRAR'S NOTICE:** The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

**Title of Regulation:** **10VAC5-200. Payday Lending (adding 10VAC5-200-115).**

**Statutory Authority:** §§ 6.1-453.1, 6.1-460 and 12.1-13 of the Code of Virginia.

**Effective Date:** January 1, 2009.

**Agency Contact:** E. J. Face, Jr., BFI Commissioner, State Corporation Commission, P. O. Box 640, Richmond, VA 23218, telephone (804) 371-9659, FAX (804) 371-9416, or email joe.face@scc.virginia.gov.

#### **Summary:**

*The State Corporation Commission is adopting a regulation to establish the amount of the database inquiry fee that licensed payday lenders will be required to pay to the database provider in connection with every consummated payday loan. The final regulation is identical to the proposed regulation.*

AT RICHMOND, SEPTEMBER 25, 2008

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2008-00309

Ex Parte: In re: payday lending  
database inquiry fee

#### **ORDER ADOPTING A REGULATION**

By Order entered in this case on July 10, 2008, the State Corporation Commission ("Commission") directed that notice be given of its proposal, acting pursuant to § 6.1-458 of the Payday Loan Act, to promulgate a regulation to establish the amount of the database inquiry fee that each licensee will be required to pay to the database provider in connection with each consummated payday loan to defray the cost of submitting a database inquiry. Notice of the proposed regulation was published in the Virginia Register on August 4, 2008, posted on the Commission's website, and sent by the Commissioner of Financial Institutions to all licensed payday lenders and other interested persons. Licensees and other interested persons were afforded the opportunity to file written comments or request a hearing on or before August 20, 2008.

**TITLE 11. GAMING**

**CHARITABLE GAMING BOARD**

**Final Regulation**

The Commission received comment letters from Ms. Joyce Hann, who supported the proposed regulation, and Mr. Sanjiv Shah, President of Checks Mate, Inc., who objected to the requirement that licensees remit the database inquiry fees to the database provider on a weekly basis. However, this requirement comes directly from § 6.1-453.1 B 4 of the Code of Virginia. The Commission did not receive any requests for a hearing.

THE COMMISSION, having considered the proposed regulation and comments, is of the opinion that the attached regulation should be adopted as final. The Commission further concludes that the regulation should have a delayed effective date of January 1, 2009, to coincide with the date that licensees are required to begin submitting inquiries to the payday lending database.

THEREFORE IT IS ORDERED THAT:

- (1) The new regulation at 10VAC5-200-115, which is attached hereto and made a part hereof, should be, and it is hereby, ADOPTED effective January 1, 2009;
- (2) The Commission's Division of Information Resources shall forthwith cause a copy of this Order, including a copy of the final regulation, to be forwarded to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations;
- (3) This Order and the attached regulation shall be posted on the Commission's website at [www.scc.virginia.gov/case](http://www.scc.virginia.gov/case); and
- (4) This case is dismissed from the Commission's docket of active cases. Commissioner Dimitri did not participate in this matter.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to the Commissioner of Financial Institutions, who shall forthwith mail a copy of this Order and the final regulation to all licensed payday lenders and such other interested persons as he may designate.

**10VAC5-200-115. Database inquiry fee.**

Pursuant to subdivision B 4 of § 6.1-453.1 of the Code of Virginia, a licensed payday lender shall pay a database inquiry fee to the database provider in connection with every payday loan consummated by the licensee. The amount of the database inquiry fee shall not exceed \$5.00 per loan, which shall be remitted by each licensee directly to the database provider on a weekly basis.

VA.R. Doc. No. R08-1401; Filed October 7, 2008, 3:26 p.m.



**REGISTRAR'S NOTICE:** The following model public participation guidelines 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: **11VAC15-12. Public Participation Guidelines (repealing 11VAC15-12-10, 11VAC15-12-20).**

**11VAC15-13. Public Participation Guidelines (adding 11VAC15-13-10 through 11VAC15-13-110).**

Statutory Authority: §§ 2.2-4007.02 and 18.2-340.18 of the Code of Virginia.

Effective Date: November 26, 2008.

Agency Contact: Betty Bowman, Acting Division Director, Department of Agriculture and Consumer Services, 101 N. 14th St., 17th Floor, James Monroe Building, Richmond, VA 23219, telephone (804) 786-3015, FAX (804) 786-1079, or email [betty.bowman@dca.virginia.gov](mailto:betty.bowman@dca.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.*

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# Regulations

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## CHAPTER 13 PUBLIC PARTICIPATION GUIDELINES

### Part I Purpose and Definitions

#### **11VAC15-13-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Charitable Gaming 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).

#### **11VAC15-13-20. 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 Charitable Gaming Board, 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](http://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

#### **11VAC15-13-30. 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.

**11VAC15-13-40. 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 11VAC15-13-30, 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**

**11VAC15-13-50. 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.

**11VAC15-13-60. 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.

**11VAC15-13-70. 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.

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# Regulations

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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.

## **11VAC15-13-80. 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.

## **11VAC15-13-90. 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.

## **11VAC15-13-100. 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.

## **11VAC15-13-110. 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. R09-1449; Filed October 3, 2008, 10:53 a.m.



## **TITLE 12. HEALTH**

### **STATE BOARD OF HEALTH**

#### **Final Regulation**

**REGISTRAR'S NOTICE:** The following model public participation guidelines 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:** **12VAC5-10. Public Participation Guidelines (repealing 12VAC5-10-10 through 12VAC5-10-80).**

**12VAC5-11. Public Participation Guidelines (adding 12VAC5-11-10 through 12VAC5-11-110).**

**Statutory Authority:** §§ 2.2-4007.02 and 32.1-12 of the Code of Virginia.

**Effective Date:** January 1, 2009.

**Agency Contact:** Douglas R. Harris, Adjudication Officer, Department of Health, 109 Governor St., Richmond, VA

23219, telephone (804) 864-7001, FAX (804) 864-7022, or email [doug.harris@vdh.virginia.gov](mailto:doug.harris@vdh.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 actions; (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**

**12VAC5-11-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the State Board of Health. 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).

**12VAC5-11-20. 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 State Board of Health, 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](http://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.

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# Regulations

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## Part II

### Notification of Interested Persons

#### **12VAC5-11-30. 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.

#### **12VAC5-11-40. 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 12VAC5-11-30, 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

#### **12VAC5-11-50. 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.

#### **12VAC5-11-60. 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.

### **12VAC5-11-70. 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.

### **12VAC5-11-80. 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.

### **12VAC5-11-90. 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.

### **12VAC5-11-100. 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.

### **12VAC5-11-110. 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.

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C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R09-1450; Filed October 8, 2008, 11:11 a.m.

## **Emergency Regulation**

Title of Regulation: **12VAC5-67. Advance Health Care Directive Registry (adding 12VAC5-67-10, 12VAC5-67-20, 12VAC5-67-30).**

Statutory Authority: § 54.1-2994 of the Code of Virginia.

Effective Dates: November 1, 2008, through October 31, 2009.

Agency Contact: Kimberly S. Barnes, Policy Analyst, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7661, or email kim.barnes@vdh.virginia.gov.

### Preamble:

*Chapters 301 and 696 of the 2008 Acts of Assembly require the board to make available a secure online central registry for advance health care directives.*

*The key provisions of this regulation consist of a description of the documents that may be submitted to the Advance Health Care Directive Registry, a provision for reasonable fees to be charged by a vendor with whom the Department of Health may contract for implementing the registry, and provisions outlining who may gain access to documents in the registry.*

### CHAPTER 67

#### ADVANCE HEALTH CARE DIRECTIVE REGISTRY

#### 12VAC5-67-10. General provisions.

A. In accordance with Article 9 (§ 54.1-2995 et seq.) of Chapter 29 of Title 54.1 of the Code of Virginia and this chapter, the Department of Health shall make available to the public an Advance Health Care Directive Registry by contracting with a vendor, publicizing the availability of an existing registry maintained by another entity or entering into a public-private partnership.

B. The department shall ensure that the contracted vendor, public-private partnership or any other entity through which the department has made the Registry available to citizens of the Commonwealth annually contacts persons who have registered documents to remind them of which documents they have registered.

#### 12VAC5-67-20. Criteria for submission of an advance directive to the Registry.

A. Documents that may be submitted to the Registry include:

1. A health care power of attorney.

2. An advance directive created pursuant to Article 8 (§ 54.1-2981 et seq.) of Chapter 29 of Title 54.1 of the Code of Virginia or a subsequent act of the General Assembly.

3. A declaration of an anatomical gift made pursuant to the Revised Uniform Anatomical Gift Act (§ 32.1-291.1 et seq. of the Code of Virginia).

B. Any document and any revocation of a document submitted for filing in the Registry shall be notarized regardless of whether notarization is required for its validity. The document shall be submitted for filing only by the person who executed the document.

C. The person submitting documents to the Registry shall be responsible for payment of any fee required by the contracted vendor, public-private partnership or any other entity through which the department has made the Registry available to citizens of the Commonwealth. Fees associated with the Registry shall not exceed the direct costs associated with the development and maintenance of the registry and with the education of the public about the availability of the registry.

#### 12VAC5-67-30. Access to the registry.

The person registering documents may specify a legal representative or other persons to have access to such documents. It shall be the responsibility of the person registering to provide all such persons with the information necessary to access the Registry. Unless otherwise specified by the person registering documents on the Registry, access to the Registry shall be limited to hospitals, nursing homes and doctors of medicine or osteopathic medicine licensed in the Commonwealth.

VA.R. Doc. No. R09-1382; Filed October 8, 2008, 11:10 a.m.

## **Proposed Regulation**

Title of Regulation: **12VAC5-120. Regulations for Testing Children for Elevated Blood-Lead Levels (amending 12VAC5-120-10, 12VAC5-120-30; adding 12VAC5-120-35).**

Statutory Authority: § 32.1-46.1 of the Code of Virginia.

### Public Hearing Information:

December 10, 2008 - 10 a.m. - Madison Building, 109 Governor St., 5th Floor Conference Room, Richmond, VA

Public Comments: Public comments may be submitted until 5 p.m. on December 26, 2008.

Agency Contact: Nancy Van Voorhis, Director, Lead Safe Virginia, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7694, or email nancy.vanvoorhis@vdh.virginia.gov.

Basis: The legal authority to promulgate the regulation is § 32.1-46.1 of the Code of Virginia, which requires health

care providers to make available information on the dangers of lead poisoning, along with a list of available resources, to parents as part of regular well-check visits for all children.

**Purpose:** The amended regulation is needed to require physicians to provide information to parents on the dangers of lead poisoning, hopefully reducing childhood exposure to lead in the environment; this amendment will bring the regulations into compliance with the requirements of the Code of Virginia. Another amendment will provide health care providers with an additional option for screening children for elevated blood-lead levels.

**Substance:** The addition of language to approve the Clinical Laboratory Improvement Amendments (CLIA)-waived instruments for administering screening tests provides additional tools for screening for elevated blood-lead levels. The language requiring health care providers to provide information on the dangers of lead poisoning to parents during well-check visits increases the awareness of the dangers and should aid in the detection and treatment of elevated blood-lead levels.

**Issues:** The proposed changes provide for an additional screening method and provide more educational material to parents on the dangers of lead poisoning. Both are advantages associated with implementing these changes. There are no disadvantages to the public or the Commonwealth.

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

Summary of the Proposed Regulation. The State Board of Health (Board) proposes to amend the existing Regulations for Testing Children for Elevated Blood-Lead Levels. The proposed amendments will allow the use of CDC<sup>1</sup>-approved and CLIA<sup>2</sup>-waived instruments for point of care testing<sup>3</sup> to screen for elevated blood-lead levels, provided that any elevated blood-lead level found through point of care testing is followed up by a venous blood-lead test performed by a qualified laboratory. The proposed regulation also requires that health care providers make information on the dangers of lead poisoning available to parents during regular well check visits for all children up to 72 months of age.

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

Estimated Economic Impact. In Virginia, the main source of childhood lead poisoning is paint in homes built before 1978 (before lead paint was banned). As the paint ages, it may chip and peel, or form invisible lead dust. Lead dust can also form when painted surfaces are rubbed together, scraped, or sanded, like in a window frame or while a home is being renovated. The dust settles on places where babies and young children crawl and play. They swallow lead when they put dust-covered surfaces, like their hands and toys, in their mouths. They may also eat visible chips of paint.

The Regulations for Testing Children for Elevated Blood-Lead Levels (regulations) require that all children up to and including 72 months of age be tested for elevated blood-lead levels unless they are determined to be at low risk for elevated blood-lead levels. Currently the regulation requires that all blood-lead samples be analyzed by a qualified laboratory. The Board proposes to amend the existing regulations and allow the use of CDC-approved and CLIA-waived instruments for point of care testing to screen for elevated blood-lead levels. Any elevated blood-lead level found through point of care testing shall be confirmed by a venous blood-lead test performed by a qualified laboratory.

The use of CLIA-waived instruments for blood-lead screening test will allow children to be tested and treated for lead poisoning much easier and faster. Instead of going to a laboratory at a later time, the children can be tested in a doctor's office or clinic during their regular wellness check visits. Currently the only CDC-approved and CLIA-waived instrument for blood-lead test is LeadCare II Blood Lead Testing System made by ESA Biosciences. According to the U.S. Food and Drug Administration (FDA), the test measures lead in blood samples taken from a patient in a doctor's office or clinic, and gives results in as little as 3 minutes. If the test indicates elevated lead levels, a second sample can be obtained before the patient leaves that can be sent to a qualified laboratory for a confirmed test. Furthermore, if the result indicates high levels of lead, doctors and the parents can begin discussing treatment options immediately.

FDA reports that studies show nearly 98 percent of the values measured by the test instrument were within the Occupational Safety and Health Administration's recommendations for blood lead proficiency testing. The proposed regulations require that any elevated blood-lead level found through point of care testing be confirmed by a venous blood-lead test performed by a qualified laboratory. Therefore, the proposed regulations will provide children who need to be tested for blood-lead levels with a faster and easier screening test method without significantly affecting the accuracy of the results.

The savings of a trip to a laboratory will likely increase the lead screening rates for children younger than 3. If children under 3 years are not tested for the identification of lead hazards, they may be at risk of developmental and neurological damage that could have been prevented. The Virginia Department of Health (VDH) reports that in Fiscal Year 2007, there were approximately 119,000 children under 3 years of age enrolled in Medicaid. These children, under the regulations, are required to be tested for blood-lead levels. However, only about 16% of the Medicaid eligible children of 3 years and younger have been tested. This proposed change will help in the detection and treatment of elevated blood-lead levels for children who need to be tested.

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The proposed regulations will likely shift some of the blood-lead testing businesses from the qualified laboratories to the 5,800 health care providers or clinics that list their primary practice as pediatrics, family medicine, or general practice. According to VDH, currently four large laboratories are accredited to do lead testing in Virginia, including the Virginia Division of Consolidated Laboratory Services, the Medical College of Virginia, Children's Hospital King's Daughters, and Norfolk Department of Public Health Laboratory. One large national lab also has a small accredited location in the Commonwealth and performs some lead testing. Some large laboratories may have drawing sites in Virginia but send the samples to their main facilities out of the Commonwealth for lead tests. Among the health care providers that list their primary practice as pediatrics, family medicine, or general practice, 11 of them are currently using some type of CLIA-waived instruments. These health care providers would be the potential point-of-care users. The approximate 5,789 health care providers who are not currently using any type of CLIA-waived instruments may have to apply for a Certificate of Waiver if they opt to use the blood-lead test instruments. The application fee will be \$150 every two years.

The Board also proposes to require health care providers to provide information on the dangers of lead poisoning to parents as part of regular well check visits for all children up to 72 months of age. This proposed change will increase the awareness of the dangers and will help in the detection and treatment of elevated blood-lead levels. VDH states that the information on the dangers of lead poisoning is already available and in use by most health care providers. Therefore, this proposed change will likely not cause any significant costs to the health care providers.

**Businesses and Entities Affected.** According to VDH, currently there are approximately 5,800 health care providers in the Commonwealth that list their primary practice as pediatrics, family medicine, or general practice. Among them, approximately 11 are currently using some type of CLIA-waived instruments. These health care providers would be the potential point-of-care users. The 2000 Census shows that there were 276,483 children under 72 months of age in the Commonwealth. The 2007 data shows that there were 221 confirmed elevated blood lead levels for children under 3 years of age in 2007. According to VDH, only the Virginia Division of Consolidated Laboratory Services, the Medical College of Virginia, Children's Hospital King's Daughters, Norfolk Department of Public Health Laboratory, and a small location of a national lab are accredited to do lead testing in Virginia. Some large laboratories have drawing sites in Virginia but conduct lead tests outside of the Commonwealth. VDH reports that currently 8 out of state labs report to VDH on a regular basis. This number may vary from time to time.

**Localities Particularly Affected.** The proposed amendments will affect all of the localities in the Commonwealth,

especially the areas that are listed as high-risk zip code areas in guidelines issued by VDH. These areas have 27% or more of the housing built before 1950 or 12% or more of the children with elevated blood-lead levels based on current available data.

**Projected Impact on Employment.** Allowing the use of CDC-approved and CLIA-waived instruments for blood-lead screening tests will likely increase the hours worked for the potential point-of-care users. On the other hand, laboratories that conduct lead testing and those that have blood-drawing stations in Virginia may experience reduction in their business, which may adversely affect the hours worked and the number of people employed in those laboratories.

**Effects on the Use and Value of Private Property.** Allowing children to be tested for blood-lead levels in a doctor's office or clinic will likely increase the profits of the doctors and the clinics, which will have a positive effect on the value of their property. The qualified laboratories may see reduction in their lead testing business, which may adversely affect their profits and the value of their property. Among the private entities, currently only one large national lab has a small accredited location in the Commonwealth and performs some lead testing. Since lead testing is not a major component of its business, the impact will likely not be substantive. Some laboratories that only have drawing sites in Virginia may also see a slight reduction in their business, which may adversely affect the value of their property.

**Small Businesses: Costs and Other Effects.** Allowing the use of CDC-approved and CLIA-waived instruments for blood-lead screening tests may increase the profits of the potential users. There are approximately 5,800 health care providers in the Commonwealth that list their primary practice as pediatrics, family medicine, or general practice. Most of them are small businesses. The qualified laboratories may experience reduction in their lead testing businesses, which may adversely affect their profits. Among the private entities, currently only one large national lab has a small accredited location in the Commonwealth and performs some lead testing. Since lead testing is not a major component of its business, the impact will likely not be substantive. Some laboratories that only have drawing sites in Virginia may also see a slight reduction in their business. Currently there are 8 out of state laboratories reporting to VDH on a regular basis.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** Doctor's offices and small clinics will likely benefit from the proposed regulations. Small laboratories may experience slight reduction in their lead testing business. There is no alternative method that will generate lower adverse impact.

**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.

<sup>1</sup> CDC refers to the Centers for Disease Control and Prevention.  
<sup>2</sup> CLIA refers to for Clinical Laboratory Improvement Amendments of 1988 (42 CFR Part 493).  
<sup>3</sup> According to the proposed regulation, "point of care testing" refers to testing by a health care provider that has a CLIA Certificate of Waiver.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The department concurs generally with the economic impact analysis performed by the Department of Planning and Budget.

**Summary:**

*The proposed amendments permit the use of the Clinical Laboratory Improvement Amendments (CLIA)-waived instruments for point-of-care testing to screen for elevated blood-lead levels, provided any elevated blood-lead level is followed up with a venous blood-lead test performed by a qualified laboratory. The proposed amendments also require health care providers to make information available on the dangers of lead poisoning, along with a list of available resources, to parents as part of regular well-check visits for all children up to 72 months of age.*

Part I  
 Definitions and General Information

**12VAC5-120-10. Definitions.**

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

"Board" means the State Board of Health.

"Commissioner" means the Commissioner of Health.

"Elevated blood-lead level" for children means 10 or more micrograms of lead per deciliter of whole blood in a child up to and including 72 months of age.

"Health care provider" means a physician or his designee or an official of a local health department.

"High-risk ~~zip code~~ ZIP Code area" means a ~~zip code~~ ZIP Code area listed in guidelines issued by the Virginia Department of Health in which 27% or more of the housing was built before 1950 or 12% or more of the children have elevated blood-lead levels based on current available data.

"Physician" means a person licensed to practice medicine in any of the 50 states or the District of Columbia.

"Point of care testing" refers to testing by a health care provider that has a CLIA Certificate of Waiver.

"Qualified laboratory" means a laboratory that is certified by the Health Care Financing Administration in accordance with the Clinical Laboratory Improvement Act (42 CFR Part 430) Amendments of 1988 (CLIA) (42 CFR Part 493) and is participating in the Centers for Disease Control and Prevention's (CDC) Blood Lead Laboratory Proficiency Program.

"µg/dL" means micrograms of lead per deciliter of whole blood.

Part II  
 Protocol for Identification of Children with Elevated Blood-Lead Levels

**12VAC5-120-30. Schedule for testing.**

Virginia health care providers should test all children up to and including 72 months of age for elevated blood-lead levels according to the following schedule unless they are determined under 12VAC5-120-60 to be at low risk for elevated blood-lead levels. All blood-lead samples shall be analyzed by a qualified laboratory. The use of a CDC-approved and CLIA-waived instrument for point-of-care testing, as a means of administering screening tests for elevated blood-lead levels, is exempted from the requirement to have all blood-lead samples analyzed by a qualified laboratory. However, any elevated blood-lead level found through point-of-care testing to be equal to or greater than 10 µg/dL shall be confirmed by a venous blood-lead test performed by a qualified laboratory in accordance with the requirements of 12VAC5-120-40.

1. Children should be tested at ages one and two years.
2. Children from 36 through 72 months of age should be tested if they have never been tested.
3. Additional testing may be ordered by the health care provider.

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4. Children should be tested at the request of a parent or guardian due to any suspected exposure.

## **12VAC5-120-35. Information about lead poisoning.**

The health care provider shall make available to parents information on the dangers of lead poisoning, along with a list of available resources, as part of regular well-check visits for all children up to 72 months of age.

VA.R. Doc. No. R08-917; Filed September 29, 2008, 11:16 a.m.

## **DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

### **Final Regulation**

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

**Title of Regulation: 12VAC30-10. State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (adding 12VAC30-10-815).**

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

**Effective Date: November 26, 2008.**

**Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, or email brian.mccormick@dmas.virginia.gov.**

### **Summary:**

*This regulatory action is intended to implement § 6034 of the Deficit Reduction Act (DRA) of 2005. This section of the DRA is based upon § 1902(a)(69) of the Social Security Act (the Act), and relates to "Cooperation with Medicaid Integrity Program Efforts." This regulatory change will enhance federal and state oversight of and increase enforcement actions against fraud and abuse in the Medicaid program. The amendment merely assures the Centers for Medicare and Medicaid Services (CMS) of the Commonwealth comply with federal statutory and regulatory requirements.*

*Section 1902(a)(69) of the Social Security Act requires that the Medicaid State Plan "provide that the States must comply with any requirements determined by the Secretary to be necessary for carrying out the Medicaid Integrity*

*Program established under § 1936." The Centers for Medicare and Medicaid Services provided the Department of Medical Assistance Services with the specific document language to implement this requirement. This document was a preprinted form containing the exact and specific language that CMS required.*

## **12VAC30-10-815. Cooperation with Medicaid Integrity Program efforts.**

**The Medicaid agency assures it complies with such requirements determined by the Secretary to be necessary for carrying out the Medicaid Integrity Program established under § 1936 of the Act.**

VA.R. Doc. No. R09-1588; Filed October 7, 2008, 1:53 p.m.

## **STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD**

### **Proposed Regulation**

**Title of Regulation: 12VAC35-190. Regulations Establishing Procedures for Voluntarily Admitting Persons Who Are Mentally Retarded to State Mental Retardation Facilities (amending 12VAC35-190-10, 12VAC35-190-21, 12VAC35-190-30, 12VAC35-190-41, 12VAC35-190-51).**

**Statutory Authority: §§ 37.2-203 and 37.2-806 of the Code of Virginia.**

**Public Hearing Information: No public hearings are scheduled.**

**Public Comments: Public comments may be submitted until December 26, 2008.**

**Agency Contact: Dawn Traver, Office of Mental Retardation Services, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, 1220 Bank St., Richmond, VA 23218-1797, telephone (757) 253-4316, FAX (757) 253-5440, or email dawn.traver@co.dmhmrzas.virginia.gov.**

**Basis: The State Mental Health, Mental Retardation and Substance Abuse Services Board has the statutory authority under §§ 37.2-203 and 37.2-806 of the Code of Virginia to adopt these regulations.**

**Purpose: The action is necessary to clarify the current regulatory provisions and to ensure that individuals seeking admissions to state training centers have accurate legal guidance for seeking such admissions. These regulations are essential to protect the health and welfare of persons who are admitted to state training centers by requiring comprehensive preadmission screening and appropriate documentation on all persons who request admission. This helps to ensure that admissions to training centers are appropriate and the needs of the individual are addressed when an individual is admitted.**

Substance: A definition for "authorized representative" has been added to be consistent with the terminology in the recently amended Human Rights Regulations, 12VAC35-115. The definition of "legally authorized representative" has been stricken.

A definition of "licensed professional" has been added and the regulations are revised to require an individual to have a diagnosis of mental retardation made by a licensed professional to be considered eligible for admission to a training center.

The timeframe for the director of a facility to make a decision on an admission request has been reduced from 30 working days to 10 working days from the receipt of the complete preadmission screening report.

Some language and terminology has been revised for clarity and consistency with the Code of Virginia and other regulations of the board.

Issues: Throughout the regulations language changes have been made to support the concept of person-centeredness and a consumer-driven system of services. These changes include the replacement of the word "applicant" with "individual." Some provisions are reorganized and revised to promote clarity and facilitate the process for members of the public seeking admissions to training centers.

The length of time allowed for the director of a facility to make a decision on an admission request is reduced from 30 working days to 10 working days from the receipt of a completed preadmission training report. This should be reasonable timeframe for the agency and the public.

The definition of "authorized representative" is updated to conform to the recently amended Human Rights Regulations. The definition of "case management community services board" has been revised to be consistent with the Code of Virginia and other agency documents. This will eliminate confusion and promote consistent regulatory and administrative processes.

The regulations have been changed to require that a diagnosis of mental retardation is made by a "licensed professional" rather than an "interdisciplinary team." The term "licensed professional" is defined. This is consistent with current professional practice.

There are no other pertinent matters of interest to the regulated community, government officials, and the public. No disadvantages to the public or the Commonwealth are noted.

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

Summary of the Proposed Amendments to Regulation. The Board of State Mental Health, Mental Retardation and Substance Abuse Services proposes to reduce the time frame

to make a decision on a request for admission to a state facility from 30 working days to 10 working days. Also, the Board proposes that the diagnosis of mental retardation is made by a licensed professional. Finally, the Board proposes a number of other changes to update the references to the Virginia Code and update specific terms for clarity and consistency.

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

Estimated Economic Impact. The Board of State Mental Health, Mental Retardation and Substance Abuse Services (the Board) proposes to reduce the time frame to make a decision on a request for admission to a state facility from 30 working days to 10 working days. According to the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS), these decisions are currently made within the 10 working days already. Thus, as the proposed changes will more accurately reflect the practice already followed, no significant economic effect is expected.

Also, the Board proposes that the diagnosis of mental retardation is made by a licensed professional. Similar to the previous proposed change, the diagnosis is already made by a licensed professional and no change in practice is expected. Consequently, no significant effect is likely to result from this proposed change.

Finally, the Board proposes a number of other changes to update the references to the Code Virginia and update specific terms for clarity and consistency. None of these changes are expected to result in any significant economic impact.

In summary, none of the proposed changes are expected to create any significant economic impact, but are expected to improve the clarity and consistency of the regulations with the current practices in place and with the correct references to the Code of Virginia.

Businesses and Entities Affected. The proposed regulations apply to five state training centers, 39 local community boards and behavioral health authorities. Approximately, 50 requests are made for admission to a state facility annually.

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

Projected Impact on Employment. The proposed changes are not expected to create any significant impact on employment.

Effects on the Use and Value of Private Property. The proposed changes are not expected to create any significant impact on the use and value of private property.

Small Businesses: Costs and Other Effects. There are no significant costs or other effects expected on small businesses.

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

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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

Summary:

*This action revises the statutory references to reflect the recent recodification of Title 37.1 to Title 37.2 of the Code of Virginia. Changes have been made to definitions of "authorized representative," "case management community services board," "mental retardation" and several other terms for clarity and consistency with the Code of Virginia and other regulations of the board. The application process and requirements are revised to require that the diagnosis of mental retardation be made by a "licensed professional," which has been defined in the regulations. The required timeframe for a decision on a request for admission has been reduced from 30 to 10 working days from the date of receipt of the completed application package.*

CHAPTER 190  
REGULATIONS ESTABLISHING PROCEDURES FOR  
VOLUNTARILY ADMITTING PERSONS WHO ARE  
MENTALLY RETARDED VOLUNTARY ADMISSIONS  
TO STATE MENTAL RETARDATION FACILITIES  
TRAINING CENTERS

**12VAC35-190-10. Definitions.**

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

"Admission" means placement of an individual in a residential facility for individuals with mental retardation as defined in this chapter so that the facility becomes the individual's primary locus of care, treatment, and training center.

"Authorized representative" means a person permitted by law or regulation to authorize the disclosure of information and consent to treatment and services, including medical treatment, or the participation in human research on behalf of an individual who lacks the mental capacity to make these decisions.

"Case management community services board (CSB)" or "CSB" means a citizens board the public body established pursuant to ~~§ 37.1-195~~ § 37.2-501 of the Code of Virginia that serves the area in which an adult resides or in which a minor's parent, or guardian or legally authorized representative resides. The case management CSB is responsible for case management, liaison with the facility when an individual is admitted to a state training center, and predischarge planning. If an individual, or the parents, guardian or legally authorized representative on behalf of an individual, chooses to reside in a different locality after the individual's discharge from the facility, the community services board serving that locality becomes the case management CSB and works with the original case management CSB, the individual receiving services and the state facility to effect a smooth transition and discharge. For the purpose of these regulations, CSB also includes a behavioral health authority established pursuant to § 37.2-602 of the Code of Virginia.

"Commissioner" means the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Discharge plan" or "~~predischarge plan~~" means a written plan prepared by the case management CSB in consultation with the state facility training center pursuant to ~~§ 37.1-197.1~~ § 37.2-505 of the Code of Virginia. This plan is prepared when the individual is admitted to the facility training center and documents the planning for services after discharge.

"Facility" means a state training center for individuals with mental retardation under the supervision and management of

~~the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.~~

"Guardian" means:

For Minors -- ~~An~~ an adult who is either appointed by the court as a legal guardian of ~~said~~ a minor or exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent, upon provisional adoption or otherwise by operation of law.

For Adults -- a person appointed by the court who is responsible for the personal affairs of an incapacitated adult under the order of appointment. The responsibilities may include making decisions regarding the individual's support, care, health, safety, habilitation, education and therapeutic treatment. Refer to definition of "incapacitated person" at ~~§ 37.1-134.6~~ § 37.2-1000 of the Code of Virginia.

~~"Legally authorized representative" means a person permitted by law or regulations to give informed consent for disclosure of information and give informed consent to treatment, including medical treatment and participation in human research on behalf of an individual who lacks the mental capacity to make these decisions.~~

"Licensed professional" means a licensed psychologist, licensed professional counselor, or other individual who holds a valid professional license and has appropriate training in intellectual testing.

~~"Mental retardation" means substantial subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior; a disability originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean; and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.~~

**12VAC35-190-21. Application for admission ~~process~~.**

A. Requests for admission to a facility training center shall be processed through the case management CSB. A parent, guardian, or ~~legally~~ authorized representative seeking admission to a facility training center for an individual with mental retardation shall apply first to the CSB that serves the area where the applicant individual, or if a minor, his parent, or guardian, or legally authorized representative is currently residing.

B. If the case management CSB determines that the services for the individual are not available in the community or the individual chooses to obtain services in the state facility training center, the CSB shall forward a prescreening

preadmission screening report, pursuant to ~~§ 37.1-65.1-B~~ § 37.2-806 B of the Code of Virginia, to the facility training center serving individuals with mental retardation from that geographic section of the state in which the applicant individual or, if a minor, his parent, or guardian, or legally authorized representative is currently residing.

C. The ~~prescreening~~ preadmission screening report shall include at a minimum:

1. An application for services;
2. A medical history indicating the presence of any current medical problems as well as the presence of any known communicable disease. In all cases, the application shall include any currently prescribed medications as well as any known medication allergies;
3. A social history and current status housing or living arrangements; and
4. A psychological evaluation that ~~has been performed in the past three years unless the facility director or designee determines that sufficient information as to the applicant's abilities and needs is included in other reports received;~~ reflects the individual's current functioning.

D. The preadmission screening report shall also include the following, as appropriate:

- ~~5. 1. A current individualized education plan for school-aged applicants unless the facility director or designee determines that sufficient information as to the applicant's abilities and needs is included in other reports received; individuals.~~
- ~~6. 2. A vocational assessment for adult applicants unless the facility director or designee determines that sufficient information as to the applicant's abilities and needs is included in other reports received; and adults.~~
- ~~7. 3. A completed discharge plan outlining the services to be provided upon discharge and anticipated date of discharge.~~

**12VAC35-190-30. Determination of suitability Criteria for admission.**

~~A. Within 30 working days from the receipt of the completed prescreening report, the director of the facility, or his designee, shall notify the case management CSB in writing of the determination on the admission request.~~

~~B. Determination of suitability A. Upon the receipt of a completed preadmission screening report, the director of the training center or designee shall determine eligibility for admission ~~by the director shall be~~ based upon the following criteria ~~and shall be so stated in his written decision:~~~~

1. The individual has a ~~primary~~ diagnosis of mental retardation;

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2. The diagnosis of mental retardation has been made by an ~~interdisciplinary team of qualified mental retardation professionals upon review of the completed prescreening report~~ a licensed professional; and

3. The ~~facility training center~~ has available space, ~~training, treatment, and habilitation services appropriate and service capacity~~ to meet the needs of the individual.

B. If the director finds that admission is not appropriate, he shall state the reasons in a written decision and may recommend an alternative location for needed services.

~~C. If the director finds that the applicant is not suitable for admission to the facility, he shall state the reasons for his decision and may recommend alternative locations for needed services. Within 10 working days from the receipt of the completed preadmission screening report, the director of the training center or designee shall provide the written decision on the admission request to the case management CSB.~~

## **12VAC35-190-41. Requests for reconsideration of the director's determination.**

In the event that (i) the case management CSB making the request for admission, or (ii) ~~a person seeking admission to a facility, the parent, guardian, or authorized representative applying on behalf of an individual~~ disagrees with the determination of the director, ~~the CSB, or person seeking admission, or both~~ they may request a reconsideration of the determination by submitting a request in writing to the commissioner within 10 working days of receiving such determination. Upon receipt of a request for reconsideration, the commissioner shall notify the ~~facility training center~~ director and the ~~facility training center~~ director shall forward the ~~prescreening preadmission screening~~ report package and related information to the commissioner within 48 hours. The commissioner shall also provide an opportunity for the ~~person individual~~ requesting reconsideration to submit for review any additional information or reasons why the admission should be approved. The commissioner shall render a written decision on the request for reconsideration within 30 calendar days of the receipt of the request and notify all involved parties. The commissioner's decision shall be binding.

## **12VAC35-190-51. ~~Procedure for admission~~ Judicial certification.**

Upon receipt of written notification from the ~~facility training center~~ director that an individual is ~~suitable~~ eligible for admission, the case management CSB ~~will~~ shall inform the individual ~~or and~~ the individual's parent, guardian, or ~~legally~~ authorized representative of this decision and assist the parent, guardian, or ~~legally~~ authorized representative in initiating a judicial proceeding pursuant to ~~§ 37.1-65.1~~ § 37.2-806 of the Code of Virginia. When the judge has certified that the individual is eligible for admission to a ~~facility training center~~ in accordance with ~~subsection C3 of § 37.1-65.1~~

§ 37.2-806 F of the Code of Virginia, a date for admission to the ~~facility will~~ training center shall be established.

VA.R. Doc. No. R07-261; Filed September 30, 2008, 11:44 a.m.

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## TITLE 13. HOUSING

### DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

#### Final Regulation

REGISTRAR'S NOTICE: The following model public participation guidelines 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: **13VAC5-10. Public Participation Guidelines (repealing 13VAC5-10-10 through 13VAC5-10-120).**

**13VAC5-11. Public Participation Guidelines (adding 13VAC5-11-10 through 13VAC5-11-110).**

Statutory Authority: §§ 2.2-4007.02 and 36-137 of the Code of Virginia.

Effective Date: November 26, 2008.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email [steve.calhoun@dhcd.virginia.gov](mailto:steve.calhoun@dhcd.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 actions; (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

#### **13VAC5-11-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Board of Housing and Community Development. 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).

#### **13VAC5-11-20. 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 Housing and Community Development, 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](http://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

#### **13VAC5-11-30. 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.

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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.

## **13VAC5-11-40. 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 13VAC5-11-30, 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

## **13VAC5-11-50. 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.

## **13VAC5-11-60. 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.

**13VAC5-11-70. 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.

**13VAC5-11-80. 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.

**13VAC5-11-90. 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.

**13VAC5-11-100. 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.

**13VAC5-11-110. 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. R09-1453; Filed October 7, 2008, 3:00 p.m.



**TITLE 15. JUDICIAL**  
**VIRGINIA STATE BAR**  
**Proposed Regulation**

**REGISTRAR'S NOTICE:** The Virginia State Bar 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.

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# Regulations

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**Title of Regulation:** **15VAC5-80. Regulations Under the Virginia Consumer Real Estate Settlement Protection Act (amending 15VAC5-80-40, 15VAC5-80-50).**

**Statutory Authority:** § 6.1-2.25 of the Code of Virginia.

**Public Hearing Information:** No public hearings are scheduled.

**Agency Contact:** Mary Yancey Spencer, Deputy Executive Director, Virginia State Bar, 707 East Main Street, Richmond, VA 23219, telephone (804) 775-0575 or email [spencer@vsb.org](mailto:spencer@vsb.org).

**Summary:**

*The amendments eliminate a requirement to give each registrant a copy of Consumer Real Estate Settlement Protection Act (CRESPA) guidelines and allow registrants to provide a copy of the surety bond rather than the original.*

**15VAC5-80-40. Unauthorized practice of law guidelines; investigation of complaints.**

The Bar will issue guidelines under CRESPA and in consultation with the SCC and the board to assist settlement agents in avoiding and preventing the unauthorized practice of law in connection with the furnishing of escrow, closing or settlement services. In conformity with CRESPA, the rules of the Virginia Supreme Court and the Bar's UPL opinions, these guidelines will delineate activities which can and cannot be carried out by registered nonattorney settlement agents in conducting settlements. The guidelines will be revised from time to time as necessary.

A copy of the guidelines will be ~~provided by the Bar to each registered settlement agent at the time of initial registration and at each re-registration~~ available on the Bar's website for review. The guidelines will also be published by the Bar in the Virginia Lawyer Register and furnished to the SCC, the board, and all other state and federal agencies that regulate financial institutions, as well as to members of the general public upon request. The guidelines may be photocopied as necessary.

The Bar will continue to receive and investigate unauthorized practice of law complaints in the real estate settlement area, as well as in other fields, under its unauthorized practice of law rules and procedures.

If the Bar receives complaints against nonattorney settlement agents that do not allege the unauthorized practice of law, it will refer the complaints to the appropriate licensing authority that has jurisdiction over the subject of the complaint. If the complaint involves noncompliance with 15VAC5-80-30, the Bar will conduct an informal investigation. If the Bar believes a violation has occurred, it will notify the settlement agent in writing. If the apparent violation is not rectified within 30 days, the Bar will refer the

matter to the appropriate licensing authority for further enforcement action.

**15VAC5-80-50. Attorney settlement agent compliance.**

A. Attorney settlement agent certification. Each attorney settlement agent shall, at the time of initial registration and each subsequent re-registration, certify on the form available from the Bar for that purpose, that the attorney settlement agent has in full force and effect the following insurance and bond coverages, and that such coverages will be maintained in full force and effect throughout the time the attorney settlement agent acts, offers or intends to act in that capacity:

1. A lawyer's professional liability insurance policy issued by a company authorized to write such insurance in Virginia providing first dollar coverage and limits of at least \$250,000 per claim covering the licensed attorney acting, offering or intending to act as a settlement agent. The policy may also cover other attorneys practicing in the same firm or legal entity.

2. A blanket fidelity bond or employee dishonesty insurance policy issued by a company authorized to write such bonds or insurance in Virginia providing limits of at least \$100,000 covering all other employees of the attorney settlement agent or the legal entity in which the attorney settlement agent practices.

3. A surety bond issued by a company authorized to write such bonds in Virginia, on a form approved by the Virginia State Bar, providing limits of at least \$200,000 covering the licensed attorney acting, offering or intending to act as a settlement agent. A copy of the approved bond form is available from the Bar. The bond may also cover other attorney settlement agents practicing in the same firm or legal entity. ~~The~~ A copy of the original surety bond must be attached to the attorney settlement agent's certification form and furnished to the Bar; a surety bond on which a law firm is named as principal may be furnished by the firm or any one attorney settlement agent in the firm, with other such attorney settlement agents in the same firm attaching a copy to their forms.

The Bar reserves the right to require other evidence of the above insurance and bond coverages beyond the attorney's certification and surety bond, at its discretion.

An attorney settlement agent who has no employees other than the attorney settlement agent or other licensed owner(s), partner(s), shareholder(s), or member(s) of the legal entity in which the attorney settlement agent practices may apply to the Bar for a waiver of the coverage required in subdivision A 2 of this section, using the waiver request form available from the Bar. Such waiver requests will be acted on by the Executive Committee of the Bar, whose decision shall constitute final action by the agency.

B. Separate fiduciary trust account. Each attorney settlement agent shall maintain one or more separate and distinct fiduciary trust account(s) used only for the purpose of handling funds received in connection with escrow, closing or settlement services. Funds received in connection with real estate transactions not covered by CRESPA may also be deposited in and disbursed from such account(s). All funds received by an attorney settlement agent in connection with escrow, closing or settlement services shall be deposited in and disbursed from the separate fiduciary account(s) in conformity with both the Bar's disciplinary rules and CRESPA. These separate fiduciary trust accounts shall be maintained in the same manner and subject to the same rules as those promulgated by the Bar for other lawyer trust accounts, as well as in conformity with CRESPA. One separate fiduciary trust account may be maintained and used by all attorney settlement agents practicing in the same firm or legal entity.

C. Settlement statements. All settlement statements for escrow, closing and settlement services governed by CRESPA and these regulations shall be in writing and identify, by name and business address, the settlement agent.

D. Complaints against attorney settlement agents. The Bar shall receive complaints and/or investigate alleged violations of CRESPA or these regulations by attorney settlement agents. If, after investigation, the Bar does not have reasonable cause to believe that one or more violations of CRESPA and/or these regulations have occurred, the Bar may dismiss the complaint as unfounded.

If, after investigation, the Bar has reasonable cause to believe that one or more violations have occurred, the following procedures shall apply:

1. The attorney settlement agent shall be notified in writing of the alleged violation(s).
2. The attorney settlement agent shall have 30 days from the date of such notification to respond in writing to the alleged violations. If, after receipt of the response, the Bar no longer has reasonable cause to believe that one or more violations of CRESPA and/or these regulations have occurred, the Bar may dismiss the complaint as unfounded.
3. If the Bar believes the alleged violation presents or presented a risk to consumers protected under CRESPA, the Bar may request a hearing and issue an order requiring the attorney settlement agent to appear at the hearing, whether or not the attorney settlement agent has responded in writing to the notice of alleged violation(s) or the 30-day response time period has lapsed.
4. In conducting investigations of alleged violations of CRESPA and/or these regulations by attorney settlement agents, the Bar, by Bar Counsel, shall have the authority to issue summonses or subpoenas to compel the attendance of

witnesses and the production of documents necessary and material to any inquiry.

5. The following shall be applicable to hearings on alleged violations of CRESPA and/or these regulations:

- a. Hearings shall be held before the disciplinary board within 60 days of the issuance of the Bar's order to appear.
  - b. The standard of proof of violations of CRESPA or these regulations shall be clear and convincing evidence.
  - c. Hearings shall be conducted in the same manner as attorney misconduct hearings as set out in Rules of Court, Part Six, Section IV, Paragraph 13.
  - d. Agreed dispositions may be entered into in the same manner as agreed dispositions at the disciplinary board in attorney misconduct cases.
  - e. The attorney settlement agent's prior disciplinary record and prior record of violations of CRESPA and/or these regulations shall be made available to the disciplinary board during the sanction stage of a hearing. The prior record of violations of CRESPA and/or these regulations may be made available to Bar subcommittees, district committees, the disciplinary board or a three-judge circuit court prior to the imposition of any sanction for attorney misconduct.
  - f. If the attorney settlement agent is found to have violated CRESPA and/or these regulations, the attorney settlement agent may be subject to the following penalties, at the disciplinary board's discretion:
    - (1) A penalty not exceeding \$5,000 for each violation;
    - (2) Revocation or suspension of the attorney settlement agent's registration; and
    - (3) Any other sanction available to the disciplinary board in attorney disciplinary proceedings under the rules of the Virginia Supreme Court, including, but not limited to, revocation or suspension of the attorney settlement agent's license to practice law.
6. The disciplinary board shall assess costs in accordance with the same rules and procedures that apply to the imposition of costs in attorney misconduct cases.
7. All matters and proceedings pertaining to alleged violations of CRESPA and/or these regulations are public. Related attorney misconduct cases shall be heard by the disciplinary board together with alleged violations of CRESPA and/or these regulations. Any related disability issues shall be heard by the disciplinary board separately.
8. The Clerk of the Disciplinary System of the Bar shall maintain files and records pertaining to ended cases involving alleged violations of CRESPA and/or these

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regulations. The clerk shall follow the same file destruction policies that are utilized in attorney misconduct cases.

9. The Bar may proceed against an attorney settlement agent for alleged violations of CRESPA and/or these regulations notwithstanding that the attorney settlement agent has resigned from the practice of law, surrendered his license to practice law in the Commonwealth of Virginia or had his license to practice law in the Commonwealth of Virginia revoked.

10. An appeal from an order of the disciplinary board imposing sanctions under CRESPA and/or these regulations shall be conducted in accordance with the provisions of Rules of Court, Part Six, Section IV, Paragraph 13 pertaining to an appeal of an order of the disciplinary board imposing sanctions upon findings of attorney misconduct.

VA.R. Doc. No. R09-1636; Filed October 7, 2008, 8:02 a.m.

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## TITLE 16. LABOR AND EMPLOYMENT

### DEPARTMENT OF LABOR AND INDUSTRY

#### Final Regulation

**REGISTRAR'S NOTICE:** The following model public participation guidelines 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:** **16VAC15-10. Public Participation Guidelines (repealing 16VAC15-10-10 through 16VAC15-10-100).**

**16VAC15-11. Public Participation Guidelines (adding 16VAC15-11-10 through 16VAC15-11-110).**

**Statutory Authority:** §§ 2.2-4007 and 40.1-6 of the Code of Virginia.

**Effective Date:** November 26, 2008.

**Agency Contact:** Reba O'Connor, Regulatory Coordinator, Department of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 371-6524, TTY (804) 786-2376, or email reba.oconnor@doli.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

#### **16VAC15-11-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Department of Labor and Industry. 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).

#### **16VAC15-11-20. 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 Labor and Industry, 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](http://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

### **16VAC15-11-30. 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.

### **16VAC15-11-40. 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 16VAC15-11-30, 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

### **16VAC15-11-50. 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.

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# Regulations

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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.

## **16VAC15-11-60. 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.

## **16VAC15-11-70. 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.

## **16VAC15-11-80. 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.

## **16VAC15-11-90. 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.

**16VAC15-11-100. 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.

**16VAC15-11-110. 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. R09-1456; Filed September 24, 2008, 2:51 p.m.

**APPRENTICESHIP COUNCIL**

**Final Regulation**

**REGISTRAR'S NOTICE:** The following model public participation guidelines 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:** **16VAC20-10. Public Participation Guidelines (repealing 16VAC20-10-10 through 16VAC20-10-100).**

**16VAC20-11. Public Participation Guidelines (adding 16VAC20-11-10 through 16VAC20-11-110).**

**Statutory Authority:** §§ 2.2-4007.02 and 40.1-117 of the Code of Virginia.

**Effective Date:** November 27, 2008.

**Agency Contact:** Beverley G. Donati, Program Director, Department of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, VA 23219, telephone (804) 225-4362, FAX (804) 786-8418, TTY (804) 786-2376, or email bev.donati@doli.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 actions; (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.*

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# Regulations

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## CHAPTER 11 PUBLIC PARTICIPATION GUIDELINES

### Part I Purpose and Definitions

#### **16VAC20-11-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Apprenticeship Council. 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).

#### **16VAC20-11-20. 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 Apprenticeship Council, 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](http://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

#### **16VAC20-11-30. 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.

**16VAC20-11-40. 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 16VAC20-11-30, 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**

**16VAC20-11-50. 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.

**16VAC20-11-60. 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.

**16VAC20-11-70. 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.

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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.

## **16VAC20-11-80. 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.

## **16VAC20-11-90. 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.

## **16VAC20-11-100. 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.

## **16VAC20-11-110. 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. R09-1457; Filed October 8, 2008, 10:41 a.m.

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## **TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING**

### **BOARD OF ACCOUNTANCY**

#### **Final Regulation**

**REGISTRAR'S NOTICE:** The following model public participation guidelines 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:** **18VAC5-10. Public Participation Guidelines (repealing 18VAC5-10-10 through 18VAC5-10-90).**

**18VAC5-11. Public Participation Guidelines (adding 18VAC5-11-10 through 18VAC5-11-110).**

**Statutory Authority:** §§ 2.2-4007.02 and 54.1-4403 of the Code of Virginia.

**Effective Date:** November 26, 2008.

Agency Contact: Katherine Idrissi, Board of Accountancy, 9960 Mayland Drive, Suite 402, Richmond, VA 23223, telephone (804) 367-1586, FAX (804) 367-2174, TTY (804) 367-9753, or email [katherine.idrissi@boa.virginia.gov](mailto:katherine.idrissi@boa.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

**18VAC5-11-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Board of Accountancy. 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).

**18VAC5-11-20. 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 Accountancy, 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](http://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,

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# Regulations

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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

#### **18VAC5-11-30. 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.

#### **18VAC5-11-40. 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 18VAC5-11-30, 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

#### **18VAC5-11-50. 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.

## **18VAC5-11-60. 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.

## **18VAC5-11-70. 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.

## **18VAC5-11-80. 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.

## **18VAC5-11-90. 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.

## **18VAC5-11-100. 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.

## **18VAC5-11-110. 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

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# Regulations

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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. R09-1463; Filed September 29, 2008, 3:55 p.m.

## **BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS**

### **Final Regulation**

**REGISTRAR'S NOTICE:** The following model public participation guidelines 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: **18VAC10-10. Public Participation Guidelines (repealing 18VAC10-10-10 through 18VAC10-10-90).**

**18VAC10-11. Public Participation Guidelines (adding 18VAC10-11-10 through 18VAC10-11-110).**

Statutory Authority: §§ 2.2-4007.02, 54.1-201, and 54.1-404 of the Code of Virginia.

Effective Date: November 27, 2008.

Agency Contact: Kathleen R. Nobsch, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (804) 527-4294, or email apelscidla@dpor.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 actions; (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

#### **18VAC10-11-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects. 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).

#### **18VAC10-11-20. 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 for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 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](http://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

#### **18VAC10-11-30. 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.

#### **18VAC10-11-40. 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 18VAC10-11-30, 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

#### **18VAC10-11-50. 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:

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# Regulations

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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.

## **18VAC10-11-60. 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.

## **18VAC10-11-70. 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.

## **18VAC10-11-80. 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.

## **18VAC10-11-90. 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.

## **18VAC10-11-100. 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.

**18VAC10-11-110. 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. R09-1464; Filed October 6, 2008, 2:32 p.m.

**COMMON INTEREST COMMUNITY BOARD**

**Final Regulation**

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

**Title of Regulation: 18VAC48-40. Time-Share Regulations (adding 18VAC48-40-10 through 18VAC48-40-110).**

**Statutory Authority:** § 54.1-2349 of the Code of Virginia.

**Effective Date:** November 27, 2008.

**Agency Contact:** Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (804) 527-4298, or email cic@dpor.virginia.gov.

**Summary:**

*This regulation establishes the registration requirements for time-share projects in the Commonwealth. In addition, the regulation provides annual reporting requirements, information regarding implementation and amendment of public offering statements, and marketing standards. The regulation is transferred from the Real Estate Board to the Common Interest Community Board. The changes consist of the replacement of references to "Real Estate Board" with "Common Interest Community Board."*

**CHAPTER 40  
TIME-SHARE REGULATIONS**

**18VAC48-40-10. Definitions and explanation of terms.**

The definitions provided in § 55-362 of the Code of Virginia, as they may be supplemented herein, shall apply to this chapter.

**18VAC48-40-20. Application for registration.**

Application for registration of time-share projects and programs shall be filed with the board on an application form furnished by the board and shall contain all of the documents and information required by § 55-391.1 of the Code of Virginia.

**18VAC48-40-30. Form of the application; submission of documents.**

The board may establish specific guidelines that establish the form for preparation of the application for registration. These guidelines may set forth reasonable requirements for paper size, binding and organization that assure uniformity in the manner disclosures are made to prospective purchasers.

**18VAC48-40-40. Filing fees.**

- 1. The filing fee for an original application for registration of a time-share project shall be \$1,500.
- 2. The filing fee for an amendment to the application for registration adding a phase or phases to the time-share project shall be \$250.
- 3. The filing fee for the annual report filed by the developer shall be \$500.

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## Regulations

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4. The filing fee for an original application for registration of an exchange company shall be \$1,000. The filing fee for the annual report of an exchange company shall be \$250.

5. There shall be no fee for filing an amended public offering statement with the board.

### **18VAC48-40-50. Preregistration offers prohibited.**

A. No developer or individual or entity acting on behalf of the developer shall offer or dispose of a time-share prior to its registration.

B. No preregistration time-share marketing activity shall be deemed an offer unless, by its express terms, it induces, solicits or encourages a prospective purchaser to execute a contract of sale for a time-share or perform some other act that would create or purport to create a legal or equitable interest in a time-share other than a security interest in or a nonbinding reservation of the time-share.

### **18VAC48-40-60. Time-share marketing standards.**

A. No promise, assertion, representation or statement of fact or opinion in connection with a time-share marketing activity shall be made that is false, inaccurate or misleading by reason of inclusion of an untrue statement of a material fact or omission of a statement of a material fact relative to the actual or intended characteristics, circumstances or features of the time-share project or a time-share.

B. No promise, assertion, representation or statement of fact or opinion made in connection with a time-share marketing activity and relating to a time-share project not registered shall, by its express terms, induce, solicit or encourage a contract for sale or performing some other act that would create or purport to create a legal or equitable interest in the time-share other than a security interest in or a nonbinding reservation of the time-share, when to do so would circumvent the provisions of the Virginia Real Estate Time-Share Act.

### **18VAC48-40-70. Preparation and distribution of public offering statement.**

A. The public offering statement shall be clear and legible with pages numbered sequentially. The first page of the public offering statement shall conform to subsection D of this section.

B. The developer may include as part of the public offering statement a receipt page printed in such a way that the developer may obtain verification that a prospective purchaser has received the public offering statement. The receipt page shall include the effective date of the public offering statement as well as a place for the date of delivery and signature lines for the prospective purchaser. The authorized receipt page in proper form, duly executed, shall be evidence that the public offering statement was delivered.

C. The developer shall distribute a current public offering statement to any prospective purchaser before such purchaser executes a contract to purchase a time-share.

D. The public offering statement should read as follows:

PURCHASER SHOULD READ THIS DOCUMENT FOR  
HIS OWN PROTECTION

PUBLIC OFFERING STATEMENT

NAME OF TIME-SHARE PROJECT:

\_\_\_\_\_  
LOCATION OF TIME-SHARE PROJECT:

\_\_\_\_\_  
NAME OF DEVELOPER:

\_\_\_\_\_  
EFFECTIVE DATE OF PUBLIC OFFERING  
STATEMENT:

AMENDED: \_\_\_\_\_

REVISED: \_\_\_\_\_

This Public Offering Statement presents information regarding Time-Share (s) being offered for sale by the Developer. The Virginia Real Estate Time-Share Act, §§ 55-360 et seq. of the Code of Virginia, requires that a Public Offering Statement be given to every Purchaser in order to provide full and accurate disclosure of the characteristics of and material circumstances affecting the Time-Share Project and the characteristics of the Time-Share(s) being offered. The Public Offering Statement is not intended, however, to be all inclusive. The Purchaser should consult other sources for details not covered by the Public Offering Statement.

The Public Offering Statement summarizes information and documents furnished by the developer to the Common Interest Community Board. The Board has carefully reviewed the Public Offering Statement to ensure that it is an accurate summary but does not guarantee its accuracy. In the event of any inconsistency between the Public Offering Statement and the material it is intended to summarize, the material shall control.

Under § 55-376 of the Virginia Real Estate Time-Share Act, a Purchaser of a Time-Share may cancel the Contract until midnight of the seventh calendar day following the execution of such Contract. If the Purchaser elects to cancel the Contract, he can obtain all payments made in connection with the Contract before cancellation. If the purchaser elects to cancel the Contract, he shall only do so either (i) by hand-delivering the notice to the developer at its principal office or at the project or (ii) by mailing the notice by certified United States mail, return receipt requested, to the developer or its designated agent.

The following are violations of Virginia law and should be reported to the Common Interest Community Board,

Perimeter Center, Suite 400, 9960 Mayland Drive, Richmond, Virginia 23233:

a misrepresentation made in the Public Offering Statement;  
an oral modification of the Public Offering Statement; or  
a representation that the Board has passed on the merits of the Time-Share(s) being offered or endorses the Time-Share project.

**PURCHASER SHOULD READ THIS DOCUMENT FOR HIS OWN PROTECTION**

**18VAC48-40-80. Nature of information to be included in public offering statement.**

A. The provisions of § 55-374 of the Code of Virginia and this chapter shall be strictly construed to promote full and accurate disclosure in the public offering statement of the characteristics of and material circumstances affecting the time-share project and the characteristics of the time-share(s) being offered.

B. The requirements for disclosure are not exclusive. In addition to expressly required information, the developer shall disclose all other available information that may reasonably be expected to affect the decision of the ordinarily prudent purchaser to accept or reject the offer of a time-share. The developer shall disclose any additional information necessary to make the required information not misleading. No information may be presented in such a fashion as to obscure the facts, to encourage a misinterpretation of the facts or otherwise to mislead a purchaser.

C. No information shall be incorporated by reference to an extrinsic source that is not readily available or already known to an ordinary purchaser. Whenever required information is not known or not reasonably available, such fact shall be stated in the public offering statement with a brief explanation. Whenever special circumstances exist that would render required disclosure inaccurate or misleading, the required disclosure shall be modified to accomplish the purpose of the requirement or the disclosure shall be omitted, provided that such modification or omission promotes full and accurate disclosure.

D. The public offering statement shall be as brief as is consistent with full and accurate disclosure. In no event shall the public offering statement be made so lengthy or detailed as to discourage close examination. Duplication and unnecessary legal language is discouraged.

E. Expressions of opinion in the public offering statement shall be deemed inconsistent with full and accurate disclosure unless there is an existing foundation in fact for the opinion expressed therein; provided, however, that this sentence shall not affect in any way the developer's duty to set forth a projected budget for the time-share estate program's operation.

F. Except for brief excerpts, the public offering statement shall not incorporate verbatim portions of the time-share instrument or other documents. The developer is encouraged in the public offering statement to direct the purchaser's attention to pertinent portions of the time-share instrument or documents attached to the public offering statement where required disclosures can be found, and if incorporated by reference, shall be deemed to be a part of the public offering statement.

G. Maps, photographs and drawings may be utilized in the public offering statement, provided that such use promotes full and accurate disclosure of the required characteristics of and material circumstance affecting the time-share project and the characteristics of the time-share(s) being offered.

**18VAC48-40-90. Readability of public offering statement.**

The public offering statement shall be clear and understandable. The public offering statement may be written in narrative, question and answer, or other form selected by the developer so long as all information required by the Virginia Real Estate Time-Share Act and this chapter is included in a clear and understandable manner. Use of defined terms in the Virginia Real Estate Time-Share Act in writing the public offering statement is encouraged. Determination as to compliance with this section is within the exclusive discretion of the board.

**18VAC48-40-100. Amendment of public offering statement; material change.**

A. Within 20 business days of the occurrence of a material change, as defined by § 55-362 of the Code of Virginia, the developer shall amend the public offering statement to disclose each occurrence constituting the material change.

B. An amendment of the public offering statement, necessitated by the occurrence of a material change, may be accomplished in any intelligible manner and, to the extent that strict compliance with any of the other provisions of this chapter governing the form of presentation of information in the public offering statement would be unduly burdensome, the developer may deviate therefrom in amending the public offering statement, provided that (i) no such deviation shall be more extensive than is necessary and appropriate under the circumstances, (ii) the requirements of this chapter are strictly observed and (iii) the presentation of information in the amended public offering statement is organized so as to facilitate reading and comprehension. Nothing contained in this chapter shall authorize a deviation from strict compliance with this chapter governing the substance of disclosure in the public offering statement. If any information has become inaccurate or misleading by reason of the material change, such information shall be deleted from the public offering statement or amended in such a way to make the information accurate and not misleading.

# Regulations

## **18VAC48-40-110. Filing of amended public offering statement.**

A. The developer shall file with the board a copy of the amended public offering statement generated pursuant to 18VAC48-40-100. The filing shall be dated by the developer and its receipt dated by the board. The amended public offering statement shall be effective upon its receipt by the board.

B. When an amended document pursuant to 18VAC48-40-100 is filed with the board, and the amendments are not apparent on the face of the document, the document shall be redlined, highlighted or otherwise marked to indicate the changes.

**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 (18VAC48-40)

Time-Share Registration Application, TSREG (eff. 9/08).

Exchange Company Registration Application, EXCOREG (eff. 9/08).

VA.R. Doc. No. R09-1574; Filed October 3, 2008, 2:40 p.m.

## **COMMON INTEREST COMMUNITY BOARD**

### **Final Regulation**

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

**Title of Regulation:** **18VAC48-60. Common Interest Community Management Information Fund Regulations (adding 18VAC48-60-10 through 18VAC48-60-60).**

**Statutory Authority:** § 54.1-2349 of the Code of Virginia.

**Effective Date:** November 27, 2008.

**Agency Contact:** Trisha Henshaw, Executive Director, Common Interest Community Board, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (804) 527-4298, or email [cic@dpor.virginia.gov](mailto:cic@dpor.virginia.gov).

**Summary:**

*The new regulation establishes the annual reporting requirements and fees of associations that are under the purview of the Common Interest Community Board. The only change in transferring the regulation from the Real Estate Board to the Common Interest Community Board is the replacement of all references to "Real Estate Board" with "Common Interest Community Board."*

### CHAPTER 60

### COMMON INTEREST COMMUNITY MANAGEMENT INFORMATION FUND REGULATIONS

#### **18VAC48-60-10. Purpose.**

These regulations govern the exercise of powers granted to and the performance of duties imposed upon the Common Interest Community Board by §§ 54.1-2350, 55-79.93:1, 55-504.1, 55-516.1 and 55-528 of the Code of Virginia.

#### **18VAC48-60-20. Annual report by association.**

"Association" shall be as defined in § 55-528 of the Code of Virginia. Each association annual report shall be on the form designated by the board or shall be a copy of the annual report filed with the State Corporation Commission. Such report shall be accompanied by the fee established by this chapter.

#### **18VAC48-60-30. Annual report by condominium association.**

Within 30 days after the date of termination of the declarant control period, and every year thereafter, an association shall file an annual report with the board.

#### **18VAC48-60-40. Annual report by cooperative association.**

Within 30 days after the date of termination of the declarant control period, and every year thereafter, an association shall file an annual report with the board.

#### **18VAC48-60-50. Annual report by property owners' association.**

Within the meaning and intent of § 55-516.1 of the Code of Virginia, within 30 days of the creation of the association, and every year thereafter, the association shall file an annual report with the board.

#### **18VAC48-60-60. Registration fee.**

The following fee schedule is based upon the size of each residential common interest community. The application fee is different than the annual renewal fee. All fees are nonrefundable.

<u>Number of Lots/Units</u>	<u>Application Fee</u>	<u>Renewal Fee</u>
<u>1-50</u>	<u>\$45</u>	<u>\$30</u>
<u>51-100</u>	<u>\$65</u>	<u>\$50</u>

<u>101-200</u>	<u>\$100</u>	<u>\$80</u>
<u>201-500</u>	<u>\$135</u>	<u>\$115</u>
<u>501-1000</u>	<u>\$145</u>	<u>\$130</u>
<u>1001-5000</u>	<u>\$165</u>	<u>\$150</u>
<u>5001+</u>	<u>\$180</u>	<u>\$170</u>

Registration certificates are renewable the month following the association's annual meeting.

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 (18VAC48-60)

Community Association Registration Application, ASSOCANRPT (eff. 09/04/08).

CIC Annual Renewal Report, CICANRENRP (eff. 09/04/08).

Declarant Annual Report for Condominium, condo annual report (eff. 09/04/08).

Time-Share Annual Report, TSANRPT (eff. 09/04/08).

VA.R. Doc. No. R09-1575; Filed October 3, 2008, 2:41 p.m.

**BOARD OF NURSING**

**Fast-Track Regulation**

Title of Regulation: **18VAC90-50. Regulations Governing the Certification of Massage Therapists (amending 18VAC90-50-10, 18VAC90-50-40, 18VAC90-50-75, 18VAC90-50-80, 18VAC90-50-90).**

Statutory Authority: § 54.1-2400 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 November 26, 2008.

Effective Date: December 11, 2008.

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.

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, establish renewal schedules and to levy fees.

Purpose: The purpose of the proposed regulatory action is to make regulations consistent with current approval of educational programs, to encourage massage therapists to be trained in CPR by accepting those hours for CE credit, to ensure that a massage therapist whose certification has been suspended or revoked has met continuing competency requirements for reinstatement, and to further define the prohibition on engaging in any sexual conduct involving a patient. Regulations that more clearly delineate the prohibition against a professional boundary violations will help to protect patients/clients who may be subject to inappropriate behaviors by massage therapists.

Rationale for Using Fast-Track Process: The board has determined that a fast-track process is appropriate because there is no controversy with this action. Massage therapists were included in the periodic review of the regulation and concurred with the changes. Amendments will primarily clarify current provisions and will not establish any new requirements.

Substance: The only amendment that may be considered substantive would be the expanded prohibition against a boundary violation. Currently the regulation makes it unprofessional conduct to initiate or engage in any sexual conduct involving a patient. Consistent with other regulations under the Board of Nursing, the amended regulation makes it unprofessional to enter into a relationship that constitutes a professional boundary violation to include taking advantage of the vulnerability of a patient or sexual conduct with a patient or his family.

Issues: The advantage to the public of the amendment on unprofessional conduct may be that more explicit language about professional boundary violations may help a massage therapist understand and avoid actions that would take advantage of a client or patient's vulnerability, including, but not limited to, sexual conduct. There are no disadvantages to the agency or the Commonwealth. There is no other pertinent matter of interest related to this action.

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

Summary of the Proposed Amendments to Regulation. The Board of Nursing (Board) proposes to: 1) reduce the requirement for continuing education (CE) from 25 hours every two years to 24 hours, 2) add cardiopulmonary resuscitation (CPR) as a qualifying course for CE, 3) amend language describing what types of relationships with clients constitute grounds for disciplinary action, 4) add clarifying language, and 5) repeal obsolete language.

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

Estimated Economic Impact. Under the current regulations to renew certification as a massage therapist a practitioner must either hold current certification by the National Certification

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Board for Therapeutic Massage & Bodywork (NCBTMB) or obtain 25 hours of continuing education (CE) each two-year certification period. “Hours chosen shall be those that enhance and expand the skills and knowledge related to the clinical practice of massage therapy...” At minimum half of those hours must be in activities or courses provided by an NCBTMB-approved provider and may include seminars, workshops, home study courses, and continuing education courses. The remaining hours can be from activities or courses that may include consultation, independent reading or research, preparation for a presentation or other such experiences that promote continued learning. Also, at least one of the hours must be in professional ethics.

NCBTMB requires 48 hours of CE in order to be re-certified every four years. In order to be consistent with NCBTMB the Board proposes to reduce the CE requirement to 24 hours each biennium. This modest change should not significantly affect massage therapists continuing competence and may provide a small cost savings.

The Board also proposes to specify that a course in CPR qualifies for CE credit. According to the Department of Health Professions (Department), CPR courses would most likely not qualify under the current regulations. The ability to properly administer CPR clearly has value in that it can potentially save lives. CPR may not be as directly related to maintaining and improving the skills and knowledge related to performing massage therapy as other qualifying courses and activities, but given that practitioners must still satisfy a significant number of CE hours that are more directly related coupled with the significant benefit of CPR, this proposal likely produces a net benefit.

The current regulations specifically list “Initiating or engaging in any sexual conduct involving a patient” as grounds for discipline. The Board proposes to replace that language with

Entering into a relationship with a patient or client that constitutes a professional boundary violation in which the massage therapist uses his professional position to take advantage of the vulnerability of a patient, a client or his family, to include but not limited to actions that result in personal gain at the expense of the patient or client, a nontherapeutic personal involvement or sexual conduct with a patient or client.

According to the Department the proposed language is intended to still include initiating or engaging in any sexual conduct involving a patient as grounds for discipline. In disciplining a practitioner the Board could potentially cite Code of Virginia Section § 54.1-3007 for the additional grounds listed in the proposed regulatory language. Including this language in the regulations may make this information more visible to practitioners though. Thus, including it may produce some benefit and will not produce any cost.

**Businesses and Entities Affected.** The proposed amendments affect the 4866 certified massage therapists in the Commonwealth. Most are self-employed or work in small business practices.<sup>1</sup>

**Localities Particularly Affected.** The proposed amendments do not disproportionately affect particular localities.

**Projected Impact on Employment.** The proposed amendments are unlikely to significantly affect employment.

**Effects on the Use and Value of Private Property.** The proposed amendments may encourage more massage therapists to take a course in CPR. Private providers of CPR may encounter a modest increase in demand for their services.

**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.

**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.

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<sup>1</sup> Source: Department of Health Professions

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Nursing concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18VAC90-50, Regulations Governing the Certification of Massage Therapists.

Summary:

*The proposed amendments update and clarify the regulations as a result of a periodic review. There is a reduction in the hours of continuing education (CE) required for biennial renewal of certification from 25 to 24 and inclusion of a course in cardiopulmonary resuscitation (CPR) as acceptable for CE credit. The only amendment that may be considered substantive would be the expanded prohibition against a boundary violation, rather than the somewhat more narrow prohibition against sexual contact.*

Part I  
General Provisions

**18VAC90-50-10. Definitions.**

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

"Board" means the Board of Nursing.

~~"Category A" means continuing education courses or programs offered by an organization or individual approved as a provider by the NCBTMB.~~

~~"Category B" means continuing education courses, programs or experiences that are related to the clinical practice of massage therapy but which may not be offered by a provider approved by the NCBTMB.~~

"Certified massage therapist" means a person who meets the qualifications specified in this chapter and who is currently certified by the board. Only someone who is certified by the board as a massage therapist may use any designation tending to imply that he is a certified massage therapist or massage therapist.

"Massage therapy" means the treatment of soft tissues for therapeutic purposes by the application of massage and bodywork techniques based on the manipulation or application of pressure to the muscular structure or soft tissues of the human body. The terms "massage therapy" and "therapeutic massage" do not include the diagnosis or treatment of illness or disease or any service or procedure for which a license to practice medicine, nursing, chiropractic therapy, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.

"NCBTMB" means the National Certification Board for Therapeutic Massage and Bodywork.

Part II  
Requirements for Certification

**18VAC90-50-40. Initial certification.**

A. An applicant seeking initial certification shall submit a completed application and required fee and verification of meeting the requirements of § 54.1-3029 A of the Code of Virginia as follows:

1. Is at least 18 years old;
2. Has successfully completed a minimum of 500 hours of training from a massage therapy program, ~~having received programmatic approval from the Virginia Board of Education, Division of Proprietary Schools, or been certified or approved by the Virginia Board of Education, Division of Proprietary Schools;~~ certified or approved by the State Council of Higher Education or an agency in another state, the District of Columbia or a United States territory that approves educational programs, notwithstanding the provisions of § 22.1-320 of the Code of Virginia;
3. Has passed the National Certification Exam for Therapeutic Massage and Bodywork, the National Certification Exam for Therapeutic Massage, or an exam deemed acceptable to the board leading to national certification; and
4. Has not committed any acts or omissions that would be grounds for disciplinary action or denial of certification as set forth in § 54.1-3007 of the Code of Virginia and 18VAC90-50-90.

B. No application for certification under provisions of § 54.1-3029 B of the Code of Virginia shall be considered unless submitted prior to July 1, 1998.

C. An applicant who has been licensed or certified in another country and who, in the opinion of the board, meets the educational requirements shall take and pass the national certifying examination as required in subsection A of this section in order to become certified.

**18VAC90-50-75. Continuing competency requirements.**

A. In order to renew a certificate biennially ~~on and after January 15, 2005,~~ a certified massage therapist shall:

1. Hold current certification by the NCBTMB; or
2. Complete at least ~~25~~ 24 hours of continuing education or learning activities with at least one hour in professional ethics. Hours chosen shall be those that enhance and expand the skills and knowledge related to the clinical practice of massage therapy and may be distributed as follows:
  - a. A minimum of ~~12.5~~ 12 of the ~~25~~ 24 hours shall be in ~~Category A~~ activities or courses provided by an NCBTMB-approved provider and may include seminars,

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workshops, home study courses, and continuing education courses.

b. No more than ~~12.5~~ 12 of the ~~25~~ 24 hours may be ~~Category B~~ activities or courses that may include consultation, independent reading or research, preparation for a presentation, a course in cardiopulmonary resuscitation or other such experiences that promote continued learning.

B. A massage therapist shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial certification in Virginia.

C. The massage therapist shall retain in his records the completed form with all supporting documentation for a period of four years following the renewal of an active certificate.

D. The board shall periodically conduct a random audit of certificate holders to determine compliance. The persons selected for the audit shall provide evidence of current NCBTMB certification or the completed continued competency form provided by the board and all supporting documentation within 30 days of receiving notification of the audit.

E. Failure to comply with these requirements may subject the massage therapist to disciplinary action by the board.

F. The board may grant an extension of the deadline for continuing competency requirements, for up to one year, for good cause shown upon a written request from the certificate holder prior to the renewal date.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the certificate holder, such as temporary disability, mandatory military service, or officially declared disasters.

## **18VAC90-50-80. Reinstatement of certificates.**

A. A massage therapist whose certificate has lapsed may reinstate his certification within one renewal period by attesting to completion of continuing competency requirements for the period and payment of the current renewal fee and the late renewal fee.

B. A massage therapist whose certificate has lapsed for more than one renewal period shall file a reinstatement application, attest to completion of continuing competency requirements for the period in which the certificate has been lapsed, not to exceed four years, and pay the reinstatement fee.

C. A massage therapist whose certificate has been suspended or revoked may apply for reinstatement by filing a reinstatement application meeting the requirements of subsection B of this section, and paying the fee for reinstatement after suspension or revocation.

D. The board may require evidence that the massage therapist is prepared to resume practice in a competent manner.

## **Part IV Disciplinary Provisions**

### **18VAC90-50-90. Disciplinary provisions.**

The board has the authority to deny, revoke or suspend a certificate issued by it or to otherwise discipline a certificate holder upon proof that the practitioner has violated any of the provisions of § 54.1-3007 of the Code of Virginia or of this chapter or has engaged in the following:

1. Fraud or deceit which shall mean, but shall not be limited to:

a. Filing false credentials;

b. Falsely representing facts on an application for initial certification, or reinstatement or renewal of a certificate; or

c. Misrepresenting one's qualifications including scope of practice.

2. Unprofessional conduct which shall mean, but shall not be limited to:

a. Performing acts which constitute the practice of any other health care profession for which a license or a certificate is required or acts which are beyond the limits of the practice of massage therapy as defined in § 54.1-3000 of the Code of Virginia;

b. Assuming duties and responsibilities within the practice of massage therapy without adequate training or when competency has not been maintained;

c. Failing to acknowledge the limitations of and contraindications for massage and bodywork or failing to refer patients to appropriate health care professionals when indicated;

d. ~~Initiating or engaging in any sexual conduct involving a patient~~ Entering into a relationship with a patient or client that constitutes a professional boundary violation in which the massage therapist uses his professional position to take advantage of the vulnerability of a patient, a client or his family, to include but not limited to actions that result in personal gain at the expense of the patient or client, a nontherapeutic personal involvement or sexual conduct with a patient or client;

e. Falsifying or otherwise altering patient or employer records;

f. Violating the privacy of patients or the confidentiality of patient information unless required to do so by law;

- g. Employing or assigning unqualified persons to practice under the title of "massage therapist" or "certified massage therapist";
- h. Engaging in any material misrepresentation in the course of one's practice as a massage therapist; or
- i. Failing to practice in a manner consistent with the code of ethics of the NCBTMB, as incorporated by reference into this chapter with the exception of the requirement to follow all policies, procedures, guidelines, regulations, codes, and requirements promulgated by the NCBTMB.

VA.R. Doc. No. R09-1291; Filed October 7, 2008, 4:21 p.m.

**BOARD OF PHARMACY**

**Fast-Track Regulation**

**Title of Regulation:** 18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-220; repealing 18VAC110-20-230).

**Statutory Authority:** § 54.1-2400 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 November 26, 2008.

**Effective Date:** December 11, 2008.

**Agency Contact:** Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email scotti.russell@dhp.virginia.gov.

**Basis:** Section 54.1-2400 of the Code of Virginia provides the Board of Pharmacy the authority to promulgate regulations to administer the regulatory process.

**Purpose:** Proposed amendments modifying the requirements for nuclear pharmacies eliminate conflicting or overlapping regulations for entities and persons that are already tightly regulated by the federal government and the Virginia Department of Health, the state agency that has oversight responsibility for radiological health programs. Some of the board's regulations were not consistent with current requirements and qualifications for nuclear pharmacists; others were no longer necessary. By streamlining the regulation and addressing only those aspects of pharmacy practice that are not regulated by other agencies, the board's requirements focus on the transmission of orders, labeling of containers and packaging as necessary for public health and safety.

**Rationale for Using Fast-Track Process:** The board has determined that a fast-track process is appropriate because there is no controversy with this action. It will eliminate conflicting or overlapping regulations for pharmacies and

pharmacists who are already subject to state and federal requirements for other agencies. The amendments have been developed with the Director of the Radioactive Materials Program at the Virginia Department of Health and are consistent with the request from that department for amendments.

**Substance:** The board's amendments eliminate conflicting language and unnecessary provisions. A subsection is amended to reference compliance with the U.S. Nuclear Regulatory Commission (NRC) and VDH requirements for staffing and operation of a nuclear facility. Another subsection is amended to use correct terminology – prescriber rather than practitioner. 18VAC110-20-230, which sets out the qualifications of a nuclear pharmacist, is repealed as unnecessary since those agencies have more stringent qualifications.

**Issues:** There are no particular advantages or disadvantages to the public since regulations have been clarified and made consistent with requirements of other agencies that are already in place.

There are no advantages or disadvantages to the agency or the Commonwealth. There are less than 10 nuclear pharmacies in Virginia, so oversight has not been problematic.

There is no other pertinent matter of interest related to this action

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

**Summary of the Proposed Amendments to Regulation.** The Board of Pharmacy proposes to repeal language that is either duplicative or in conflict with U.S. Nuclear Regulatory Commission (NRC) and Virginia Department of Health provisions.

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

**Estimated Economic Impact.** The proposal to repeal duplicative language will have no effect since requirements remain in the NRC and VDH provisions. According to the Department of Health Professions language that is not consistent with NRC and VDH rules has not been enforced. Thus repealing this language will have no impact beyond presenting clearer information to the public concerning the law as applied. Thus the proposed changes produce benefit and no cost.

**Businesses and Entities Affected.** The proposed amendments affect the fewer than ten<sup>1</sup> pharmacies which provide radiopharmaceutical services in the Commonwealth.

**Localities Particularly Affected.** The proposed amendments do not disproportionately affect particular localities.

**Projected Impact on Employment.** The proposal amendments do not significantly affect employment.

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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 do not significantly affect small businesses.

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

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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<sup>1</sup> Data Source: Department of Health Professions

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Pharmacy concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18VAC110-20, Regulations Governing the Pharmacy, relating to requirements for nuclear pharmacies.

## Summary:

*The board has amended its regulations pertaining to the general requirements for pharmacies providing radiopharmaceutical services and repealed the section of regulations that establishes the qualifications for a nuclear pharmacist. Amendments will refer to standards and requirements of the U. S. Nuclear Regulatory Commission*

*(NRC) and the Virginia Department of Health (VDH) related to the staffing and operation of a nuclear pharmacy.*

## Part V Nuclear Pharmacies

### **18VAC110-20-220. General requirements for pharmacies providing radiopharmaceutical services.**

~~A. A permit to operate a pharmacy providing radiopharmaceutical services shall be issued only to a qualified nuclear pharmacist as defined in 18VAC110-20-230. In emergency situations, in the absence of the nuclear pharmacist, he may designate one or more other qualified pharmacists to have access to the licensed area. These individuals may obtain single doses of radiopharmaceuticals for the immediate emergency and shall document such withdrawals in the control system.~~

~~B. Pharmacies providing ordinary pharmacy services in addition to radiopharmaceutical services shall comply with all regulations applicable to pharmacies in general. Pharmacies providing only radiopharmaceutical services shall comply with all regulations related to physical standards, sanitary conditions and security.~~

~~C. A. Nuclear pharmacies shall have adequate space and equipment, commensurate with the scope of services required and provided and in compliance comply with standards and requirements of the Nuclear Regulatory Commission (NRC) and the Virginia Department of Health related to the staffing and operation of the facility.~~

~~D. B. Radiopharmaceuticals are to be dispensed only upon an order from a practitioner prescriber authorized to possess, use and administer radiopharmaceuticals.~~

1. Orders shall originate at an institution or healthcare facility licensed to receive and possess radiopharmaceuticals, and must contain all necessary information relative to the radiopharmaceutical, activity, time of calibration, and any special preparation or delivery instructions.

2. Orders for radiopharmaceuticals may be transmitted orally, by fax, or by electronic transmission by an authorized agent of the prescriber. If the fax or electronic transmission of the authorized agent is pursuant to an oral order from the prescriber, the transmitted document need not include the prescriber's signature, but must include the name of the agent.

~~E. C. The immediate outside container of a radioactive drug to be dispensed shall also be labeled in accordance with requirements of § 54.1-3410.1 B of the Code of Virginia.~~

~~F. D. The immediate inner container shall be labeled with: (i) the standard radiation symbol; (ii) the words "Caution--~~

Radioactive Material"; and (iii) the serial number assigned to the order.

~~G. The amount of radioactivity shall be determined by radiometric methods for each individual dose immediately prior to dispensing.~~

~~H. E. Nuclear pharmacies may redistribute approved radioactive drugs if the pharmacy does not process the radioactive drugs in any manner nor violate the product packaging.~~

**18VAC110-20-230. Qualification as a nuclear pharmacist. (Repealed.)**

~~In order to practice as a nuclear pharmacist, a pharmacist shall possess the following qualifications:~~

- ~~1. Meet Nuclear Regulatory Commission (NRC) standards of training for medically used or radioactive by product material.~~
- ~~2. Have received a minimum of 200 contact hours of didactic instruction in nuclear pharmacy.~~
- ~~3. Attain a minimum of 500 hours of clinical nuclear pharmacy training under the supervision of a qualified nuclear pharmacist in a nuclear pharmacy providing nuclear pharmacy services, or in a structured clinical nuclear pharmacy training program in an approved school of pharmacy.~~
- ~~4. Submit to the board an affidavit of experience and training meeting the requirements of subdivisions 1, 2 and 3 of this section; documentation of NRC approval as an authorized nuclear pharmacist; or documentation of certification as a nuclear pharmacist by the American Pharmaceutical Association Board of Pharmaceutical Specialties.~~

VA.R. Doc. No. R09-1359; Filed October 7, 2008, 4:22 p.m.

**BOARD OF COUNSELING**

**Proposed Regulation**

**Title of Regulation:** 18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy (amending 18VAC115-50-40, 18VAC115-50-60).

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

**Public Hearing Information:**

November 13, 2008 - 1 p.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Richmond, VA

**Public Comments:** Public comments may be submitted until December 26, 2008.

**Agency Contact:** Evelyn B. Brown, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300,

Richmond, VA 23233, telephone (804) 367-4488, FAX (804) 527-4435, or email evelyn.brown@dhp.virginia.gov.

**Basis:** Regulations are promulgated under the general authority of Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia. Section 54.1-2400 provides the Board of Counseling the authority to promulgate regulations to administer the regulatory system. The specific authorization to promulgate regulations establishing the qualifications for licensure as a marriage and family therapist is found in § 54.1-3505 of the Code of Virginia.

**Purpose:** The purpose of the action to amend regulations for the licensure of marriage and family therapists to require that at least 100 of the 200 hours of clinical supervision in a residency be provided by a licensed marriage and family therapist and to repeal the provision that allows a person holding a license as a professional counselor to be granted a license as a marriage and family therapist without further examination. The action is in response to a petition for rulemaking submitted by Dr. Arnold Woodruff, President of the Virginia Association for Marriage and Family Therapy. It was strongly supported by comment to the board from licensed MFT's and others.

The purpose of the action is to ensure that persons who hold the marriage and family therapy license are specifically trained, experienced and tested in the unique theories and modalities for addressing the needs of their clients. While other mental health professionals can and do treat individuals and families, public health and safety is protected by the assurance that a person who holds a license as a marriage and family therapist is appropriately qualified in the specific application of theory and technique.

**Substance:** 18VAC115-50-60, which sets out the requirements for a residency in marriage and family therapy, is amended to specify that at least 100 of the required 200 hours of face-to-face supervision be provided by a person holding a license as a marriage and family therapist. The requirement would be similar to that for licensed professional counselors and would include a provision to allow the board to consider special requests in the event that the regulations create an undue burden in regard to geography or disability that limits the resident's access to qualified supervision.

In addition, 18VAC115-50-40 is amended to repeal subdivision 3 b, which allows a person holding a license as a licensed professional counselor to be licensed by endorsement without taking and passing the national examination in marriage and family therapy. Both changes would provide the consumer of mental health services with greater assurance about the training and competency of the practitioner who holds a license to provide marriage and family therapy.

**Issues:** The primary advantage to the public would be the assurance that persons who hold a license as a marriage and family therapist have had appropriate supervision in their

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residencies and have been tested on a national standard in the systemic theories and application relative to marriage and family therapy. There are no disadvantages to consumers of mental health services; persons who hold a license as a professional counselor will continue to be authorized to provide marriage and family counseling, and residents who have difficulty finding a licensed MFT to provide one-half of the required supervision will be able to request a hardship waiver.

There are no disadvantages to the agency or the Commonwealth. By specifying requirements for a supervisor, there will be less ambiguity in the regulation, which may encourage compliance. There are no other matters of interest.

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

Summary of the Proposed Amendments to Regulation. The Board of Counseling (Board) proposes to amend its Regulations Governing the Practice of Marriage and Family Therapy to specify that half of the required hours of face-to-face resident supervision be provided by a licensed marriage and family therapist. The Board also proposes to eliminate the regulatory provision that allows licensed professional counselors to also be licensed by endorsement as marriage and family therapists.

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, residents who are training to be marriage and family therapists must complete 4,000 hours of post graduate supervised clinical experience. Of those 4,000 hours, 200 must be under the face-to-face supervision of a licensed marriage and family therapist, professional counselor, clinical psychologist, clinical social worker or psychiatrist. The Board proposes to amend this provision so that 100 of the 200 hours of required face-to-face supervision must be performed by a licensed marriage and family therapist.

The Department of Health Professions (DHP) reports that this change is proposed to account for "distinctive differences in the therapy paradigms and systemic differences in theory and application with respect to marriage and family systems." The Board believes that, because of these differences, individuals who are working toward licensure in marriage and family therapy will be better prepared if they have a certain amount of dedicated supervision from individuals that are already licensed in the residents' chosen field. To the extent that marriage and family therapists have a distinct knowledge base and skills set that they can pass on to future licensees, affected residents will benefit from this regulatory change.

DHP reports that the Board currently licenses approximately 830 marriage and family therapists, 2,940 professional

counselors, 1,912 clinical psychologists and 4,409 clinical social workers. Since psychiatrists are licensed as medical doctors, and the Board of Medicine does not issue separate licenses for areas of specialization, DHP does not know the number of psychiatrists that practice in the Commonwealth. Given the much smaller pool of licensed marriage and family therapists, when compared to the pool of all types of professionals that can now offer supervision, residents will likely have a more difficult time finding an appropriate supervisor for the supervision hours that will now be restricted. DHP reports, however, that residents who cannot find an available licensed marriage and family therapist to provide the proposed supervision may apply to the Board for a waiver that would allow supervision by other acceptable Board licensed professionals. Currently this waiver program is Board policy but is not explicitly written into this regulation. Residents and others who are subject to this regulation would likely benefit from the clarity added if the Board were to explicitly write the waiver program into the regulatory language.

Currently regulation includes a provision that allows licensed professional counselors to also gain licensure as marriage and family therapists without have to meet separate education and examination requirements. The Board proposes to eliminate this provision. Once this amended regulation is promulgated, licensed professional counselors will have to have completed all course work required for licensure as a marriage and family therapist, and will have to take the marriage and family therapy exam, if they want to be licensed as marriage and family therapists.

DHP reports that, although there would be overlap with the requirements of the license they already hold, most licensed professional counselors would not have already completed all of the course work required for the dual licensure. Accordingly, licensed professional counselors would have to incur explicit costs for tuition, books and related school fees, as well as implicit costs for the time spent on the extra required education, if they want to also be licensed as marriage and family therapists. These costs could be small, if individual licensed professional counselors have already attained most of the required education, or they could be quite large, if individual licensed professional counselors have only taken a few of the required courses. DHP reports that there is no solid information that would indicate which of these cost paths is more likely. With this regulatory change, all licensed professional counselors who also wish to be licensed as marriage and family therapists would incur a fee of \$224 for the marriage and family therapy examination and will also incur implicit cost for the time spent preparing for, and taking, this exam.

DHP reports that licensed professional counselors will not have to limit the scope of their practice on account of this proposed regulatory change. Licensed professional counselors who choose not to bear the extra costs that will be associated

with licensure as a marriage and family therapist may be at a slight disadvantage in attracting new clients who have family related issues, but they will not face a regulatory bar to providing services for the clients they do attract.

**Businesses and Entities Affected.** These regulatory changes will mainly affect licensed professional counselors, who might wish to also be licensed as marriage and family therapists, and residents in marriage and family therapy programs. DHP reports that the Board currently licenses 2,940 professional counselors but has no data to indicate how many professional counselors have also been licensed by endorsement as marriage and family therapists. The number of individuals who are currently serving residencies in a marriage and family therapy program is also unknown. Other Board licensees will also be affected by these regulatory changes to the extent that they are no longer eligible to provide supervision for part of residents' required supervised clinical hours.

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

**Projected Impact on Employment.** To the extent that this proposed regulation prescribes resident supervision, resident employment in offices of other Board licensed professionals will be limited.

**Effects on the Use and Value of Private Property.** Licensed professional counselors who choose not to bear the extra costs that will be associated with licensure as a marriage and family therapist may be at a slight disadvantage in attracting new clients who have family related issues. If this proposed regulation does adversely affect the number of clients that professional counselors can attract, these counselors may see their revenues decrease. This, in turn, may slightly lower the value of impacted counseling practices.

**Small Businesses: Costs and Other Effects.** Most licensed professional counselors in the Commonwealth are part of a practice that qualifies as a small business. These businesses will be affected by this proposed regulation only if the shift in requirements to gain an additional license in marriage and family therapy puts them at a disadvantage when attracting and retaining clients.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** There appear to be no alternative regulatory schemes that would both meet the Board's goal of recognizing marriage and family therapy as a distinct profession and further minimize any adverse impact on affected small businesses.

**Real Estate Development Costs.** This regulatory action will likely have no affect on real estate development costs in the Commonwealth.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed

regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Counseling concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18VAC115-50, Regulations Governing the Practice of Marriage and Family Therapists.

Summary:

*The requirements for a residency in marriage and family therapy are amended to specify that at least 100 of the required 200 hours of face-to-face supervision must be provided by a person holding a license as a marriage and family therapist. The requirements for licensure by endorsement are amended to repeal the provision that allows a person holding a license as a licensed professional counselor to be licensed by endorsement without taking and passing the national examination in marriage and family therapy.*

**18VAC115-50-40. Application for licensure by endorsement.**

A. Every applicant for licensure by endorsement shall submit in one package:

1. A completed application;
2. The application processing and initial licensure fee prescribed in 18VAC115-50-20; and
3. Documentation of licensure as follows:
  - a. Verification of all professional licenses or certificates ever held in any other jurisdiction. In order to qualify for

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endorsement the applicant shall have no unresolved action against a license or certificate. The board will consider history of disciplinary action on a case-by-case basis;

b. Documentation of a marriage and family therapy license obtained by standards specified in subsection B of this section; ~~or~~

~~e. If currently holding an unrestricted license as a professional counselor in Virginia, documentation of successful completion of the requirements set forth in 18VAC115-50-50, 18VAC115-50-55 and 18VAC115-50-60.~~

B. Every applicant for licensure by endorsement shall meet one of the following:

1. Educational requirements consistent with those specified in 18VAC115-50-50 and 18VAC115-50-55 and experience requirements consistent with those specified in 18VAC115-50-60; or

2. If an applicant does not have educational and experience credentials consistent with those required by this chapter, he shall provide:

a. Documentation of education and supervised experience that met the requirements of the jurisdiction in which he was initially licensed as verified by an official transcript and a certified copy of the original application materials; and

b. Evidence of clinical practice for five of the last six years immediately preceding his licensure application in Virginia.

3. In lieu of transcripts verifying education and documentation verifying supervised experience, the board may accept verification from the credentials registry of the American Association of State Counseling Boards or any other board-recognized entity.

## **18VAC115-50-60. Residency.**

A. Registration.

1. Applicants who render counseling services shall:

a. With their supervisor, register their supervisory contract on the appropriate forms for board approval before starting to practice under supervision;

b. Have submitted an official transcript documenting a graduate degree as specified in 18VAC115-50-50 to include completion of the internship requirement specified in 18VAC115-50-55; and

c. Pay the registration fee.

2. After September 3, 2008, applicants who are beginning their residencies in exempt settings shall register

supervision with the board to assure acceptability at the time of application.

B. Residency requirements.

1. The applicant shall have completed at least two years of supervised post-graduate degree experience, representing no fewer than 4,000 hours of supervised work experience, to include 200 hours of supervision with the supervisor in the practice of marriage and family therapy. Residents shall receive a minimum of one hour and a maximum of four hours of supervision for every 40 hours of supervised work experience. No more than 100 hours of the supervision may be acquired through group supervision, with the group consisting of no more than six residents. One hour of group supervision will be deemed equivalent to one hour of individual supervision.

2. Of the 4,000 hours stipulated, at least 2,000 hours must be acquired in direct client contact of which 1,000 hours shall be with couples or families or both.

3. The residency shall consist of practice in the core areas set forth in 18VAC115-50-55.

4. The residency shall begin after the completion of a master's degree in marriage and family therapy or a related discipline as set forth in 18VAC115-50-50.

5. A graduate-level internship completed in a program that meets the requirements set forth in 18VAC115-50-50 may count for no more than 600 of the required 4,000 hours of experience. The internship shall include 20 hours of individual on-site supervision, and 20 hours of individual or group off-site supervision. Internship hours shall not begin until completion of 30 semester hours toward the graduate degree.

6. A graduate-level degree internship completed in a COAMFTE-approved program or a CACREP-approved program in marriage and family counseling/therapy may count for no more than 900 of the required 4,000 hours of experience.

7. In order for a graduate level internship to be counted toward a residency, either the clinical or faculty supervisor shall be licensed as set forth in subsection C of this section.

8. Residents shall not call themselves marriage and family therapists, solicit clients, bill for services rendered or in any way represent themselves as marriage and family therapists. During the residency, they may use their names, the initials of their degree and the title "Resident in Marriage and Family Therapy." Clients shall be informed in writing of the resident's status, along with the name, address and telephone number of the resident's supervisor.

9. Residents shall not engage in practice under supervision in any areas for which they do not have appropriate education.

10. Residents who do not become candidates for licensure after five years of supervised training shall submit an explanation to the board stating reasons the residency should be allowed to continue.

C. Supervisory qualifications. A person who provides supervision for a resident in marriage and family therapy shall:

1. Hold an active, unrestricted license as a marriage and family therapist, professional counselor, clinical psychologist, clinical social worker or psychiatrist in the jurisdiction where the supervision is being provided;
2. Document two years post-licensure marriage and family therapy experience; and
3. Have received professional training in supervision, consisting of three credit hours or 4.0 quarter hours in graduate-level coursework in supervision or at least 20 hours of continuing education in supervision offered by a provider approved under 18VAC115-50-96. Persons who have provided supervision for a residency prior to September 3, 2008, shall complete such coursework or continuing education by September 3, 2010. At least one-half of the face-to-face supervision shall be rendered by a licensed marriage and family therapist.

D. Supervisory responsibilities.

1. The supervisor shall complete evaluation forms to be given to the resident at the end of each three-month period. The supervisor shall report the total hours of residency and evaluate the applicant's competency to the board.
2. Supervision by an individual whose relationship to the resident is deemed by the board to compromise the objectivity of the supervisor is prohibited.
3. The supervisor shall assume full responsibility for the clinical activities of residents as specified within the supervisory contract, for the duration of the residency.

VA.R. Doc. No. R07-239; Filed October 7, 2008, 4:25 p.m.

**BOARD OF PSYCHOLOGY**  
**Final Regulation**

**REGISTRAR'S NOTICE:** The following model public participation guidelines 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: **18VAC125-10. Public Participation Guidelines (repealing 18VAC125-10-10 through 18VAC125-10-120).**

**18VAC125-11. Public Participation Guidelines (adding 18VAC125-11-10 through 18VAC125-11-110).**

Statutory Authority: §§ 2.2-4007.02 and 54.1-2400 of the Code of Virginia.

Effective Date: November 26, 2008.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Psychology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4697, FAX (804) 327-4435, 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 actions; (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**

**18VAC125-11-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Board of Psychology. 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).

**18VAC125-11-20. Definitions.**

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

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"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 Psychology, 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](http://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

#### **18VAC125-11-30. 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.

#### **18VAC125-11-40. 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 18VAC125-11-30, 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

**18VAC125-11-50. 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.

**18VAC125-11-60. 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.

**18VAC125-11-70. 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.

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## **18VAC125-11-80. 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.

## **18VAC125-11-90. 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.

## **18VAC125-11-100. 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.

## **18VAC125-11-110. 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. R09-1489; Filed October 7, 2008, 4:24 p.m.

## **BOARD OF SOCIAL WORK**

### **Final Regulation**

**Title of Regulation:** **18VAC140-20. Regulations Governing the Practice of Social Work (amending 18VAC140-20-10, 18VAC140-20-40, 18VAC140-20-50, 18VAC140-20-60, 18VAC140-20-105, 18VAC140-20-150, 18VAC140-20-160; adding 18VAC140-20-51; repealing 18VAC140-20-140).**

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

**Effective Date:** November 26, 2008.

**Agency Contact:** Evelyn B. Brown, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4488, FAX (804) 527-4435, or email [evelyn.brown@dhp.virginia.gov](mailto:evelyn.brown@dhp.virginia.gov).

### **Summary:**

*Amended regulations were adopted by the Board of Social Work to require registration of supervision by persons preparing for licensure in social work, regardless of the practice setting, to allow for group supervision, and to specify the professional training necessary for a licensee to serve as a supervisor. Amendments will also allow a bachelor's degree graduate to take the examination for a licensed social worker prior to completing 3,000 hours of work experience. Finally, the standards of professional conduct are revised to update the language, address conduct seen in disciplinary cases and provide consistency with other behavioral health professions.*

**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.

Part I  
General Provisions

**18VAC140-20-10. Definitions.**

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-3700 of the Code of Virginia:

- Board
- Casework
- Casework management and supportive services
- Clinical social worker
- Practice of social work
- Social worker

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

"Accredited school of social work" means a school of social work accredited by the Council on Social Work Education.

"Clinical course of study" means graduate course work which includes specialized advanced courses in human behavior and social environment, social policy, research, clinical practice with individuals, families, groups and a clinical practicum which focuses on diagnostic, prevention and treatment services.

"Clinical social work services" include the application of social work principles and methods in performing assessments and diagnoses based on a recognized manual of mental and emotional disorders or recognized system of problem definition, preventive and early intervention services and treatment services, including but not limited to psychotherapy and counseling for mental disorders, substance abuse, marriage and family dysfunction, and problems caused by social and psychological stress or health impairment.

"Exempt practice" is that which meets the conditions of exemption from the requirements of licensure as defined in § 54.1-3701 of the Code of Virginia.

"Face-to-face supervision" means the physical presence of the individuals involved in the supervisory relationship during either individual or group supervision.

"Nonexempt practice" is that which does not meet the conditions of exemption from the requirements of licensure as defined in § 54.1-3701 of the Code of Virginia.

~~"Supervision" means the relationship between a supervisor and supervisee which is designed to promote the development of responsibility and skill in the provision of social work services. Supervision is the inspection, critical evaluation, and direction over the services of the supervisee. Supervision shall include, without being limited to, the review of case~~

~~presentations, audio tapes, video tapes, and direct observation a professional relationship between a supervisor and supervisee in which the supervisor directs, monitors and evaluates the supervisee's social work practice while promoting development of the supervisee's knowledge, skills and abilities to provide social work services in an ethical and competent manner.~~

Part II  
Requirements for Licensure

**18VAC140-20-40. Requirements for licensure by examination as a licensed clinical social worker.**

Every applicant for examination for licensure ~~by the board as a licensed clinical social worker~~ shall:

1. Meet the education and experience requirements prescribed in 18VAC140-20-50 ~~or 18VAC140-20-60 for the category of practice in which licensure is sought.~~
2. Submit in one package to the board office, ~~not less than 90 days prior to the date of the written examination:~~
  - a. A completed notarized application;
  - b. Documentation, on the appropriate forms, of the successful completion of the supervised experience requirements of 18VAC140-20-50 ~~or 18VAC140-20-60~~ along with documentation of the supervisor's out-of-state license where applicable. Applicants whose former supervisor is deceased, or whose whereabouts is unknown, shall submit to the board a notarized affidavit from the present chief executive officer of the agency, corporation or partnership in which the applicant was supervised. The affidavit shall specify dates of employment, job responsibilities, supervisor's name and last known address, and the total number of hours spent by the applicant with the supervisor in face-to-face supervision;
  - c. The application fee prescribed in 18VAC140-20-30;
  - d. Official transcript or transcripts in the original sealed envelope submitted from the appropriate institutions of higher education directly to the applicant; and
  - e. Documentation of applicant's out-of-state licensure where applicable.

**18VAC140-20-50. Education and experience requirements for licensed clinical social worker.**

A. Education. The applicant shall hold a minimum of a master's degree from an accredited school of social work. Graduates of foreign institutions shall establish the equivalency of their education to this requirement through the Foreign Equivalency Determination Service of the Council of Social Work Education.

1. The degree program shall have included a graduate clinical course of study; or

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2. The applicant shall provide documentation of having completed specialized experience, course work or training acceptable to the board as equivalent to a clinical course of study.

B. Supervised experience. ~~Supervised experience obtained prior to December 23, 1998, may be accepted towards licensure if this supervision met the requirements of the board which were in effect at the time the supervision was rendered.~~ Supervised experience in all settings obtained ~~in nonexempt settings~~ in Virginia without prior written board approval will not be accepted toward licensure. Supervision begun before [ November 28, 2007 November 26, 2008 ], that met the requirements of this section in effect prior to that date will be accepted until [ November 28, 2011 November 26, 2012 ].

1. Registration. An individual who proposes to obtain supervised post-master's degree experience in Virginia shall, prior to the onset of such supervision:

- a. Register on a form provided by the board and completed by the supervisor and the supervised individual; and
- b. Pay the registration of supervision fee set forth in 18VAC140-20-30.

2. Hours. The applicant shall have completed a minimum of 3,000 hours of supervised post-master's degree experience in the delivery of clinical social work services. A minimum of one hour of ~~individual~~ face-to-face supervision shall be provided each week for a total of at least 100 hours. No more than 50 of the 100 hours may be obtained in group supervision, nor shall there be more than six persons being supervised in a group unless approved in advance by the board. The board may consider alternatives to face-to-face supervision if the applicant can demonstrate an undue burden due to hardship, disability or geography.

- a. Experience shall be acquired in no less than two nor more than four years.
- b. Supervisees shall average no less than 15 hours per week in face-to-face client contact for a minimum of 1,380 hours. The remaining hours may be spent in ancillary duties and activities supporting the delivery of clinical services.

3. An individual who does not ~~become a candidate for licensure~~ complete the supervision requirement after four years of supervised experience shall submit evidence to the board showing why the training should be allowed to continue.

C. Requirements for supervisors.

1. The supervisor shall ~~be~~ hold an active, unrestricted license as a licensed clinical social worker in the jurisdiction in which the clinical services are being rendered with at least ~~five years post Master of Social~~

~~Work~~ three years of postlicensure clinical social work experience. The board may consider supervisors with commensurate qualifications if the applicant can demonstrate an undue burden due to geography or disability.

2. The supervisor shall have received professional training in supervision, consisting of a three credit-hour graduate course in supervision or at least 14 hours of continuing education offered by a provider approved under 18VAC140-20-105. The graduate course or hours of continuing education in supervision shall be obtained by a supervisor within five years immediately preceding registration of supervision.

3. The supervisor shall not provide supervision for a member of his immediate family or provide supervision for anyone with whom he has a dual relationship.

D. Responsibilities of supervisors [ : ] ~~2.~~ The supervisor shall:

~~a. 1.~~ Be responsible for the ~~casework~~ social work activities of the ~~prospective applicant~~ supervisee as set forth in this subsection once the supervisory arrangement is accepted;

~~b. 2.~~ Review and approve the diagnostic assessment and treatment plan of a representative sample of the clients assigned to the applicant during the course of supervision. The sample should be representative of the variables of gender, age, diagnosis, length of treatment and treatment method within the client population seen by the applicant. It is the applicant's responsibility to assure the representativeness of the sample that is presented to the supervisor. ~~The supervisor shall be available to the applicant on a regularly scheduled basis for supervision. The supervisor will maintain documentation, for five years post supervision, of which clients were the subject of supervision;~~

~~e. 3.~~ Provide supervision only for those ~~casework~~ social work activities for which the supervisor has determined the applicant is competent to provide to clients;

~~d. 4.~~ Provide supervision only for those activities for which the supervisor is qualified by education, training and experience; ~~and~~

~~e. 5.~~ Evaluate the supervisee's knowledge and document minimal competencies in the areas of an identified theory base, application of a differential diagnosis, establishing and monitoring a treatment plan, development and appropriate use of the professional relationship, assessing the client for risk of imminent danger, and implementing a professional and ethical relationship with clients;

6. Be available to the applicant on a regularly scheduled basis for supervision; and

~~7. Maintain documentation, for five years postsupervision, of which clients were the subject of supervision.~~

~~3. Supervision between members of the immediate family (to include spouses, parents, and siblings) will not be approved.~~

~~D. Supervision requirements for applicants in exempt practices. Individuals may obtain the required supervision and experience without registration of supervision provided such experience:~~

- ~~1. Is obtained in an exempt practice; and~~
- ~~2. Meets all other requirements for supervised experience as set forth in this section.~~

**18VAC140-20-51. Requirements for licensure by examination as a licensed social worker.**

A. In order to be approved to sit for the board-approved examination for a licensed social worker, an applicant shall:

1. Meet the education requirements prescribed in 18VAC140-20-60 A.
2. Submit in one package to the board office:
  - a. A completed notarized application;
  - b. The application fee prescribed in 18VAC140-20-30; and
  - c. Official transcript or transcripts in the original sealed envelope submitted from the appropriate institutions of higher education directly to the applicant.

B. In order to be licensed by examination as a licensed social worker, an applicant shall:

1. Meet the education and experience requirements prescribed in 18VAC140-20-60; and
2. Submit, in addition to the application requirements of subsection A, the following:
  - a. Documentation, on the appropriate forms, of the successful completion of the supervised experience requirements of 18VAC140-20-60 along with documentation of the supervisor's out-of-state license where applicable. An applicant whose former supervisor is deceased, or whose whereabouts is unknown, shall submit to the board a notarized affidavit from the present chief executive officer of the agency, corporation or partnership in which the applicant was supervised. The affidavit shall specify dates of employment, job responsibilities, supervisor's name and last known address, and the total number of hours spent by the applicant with the supervisor in face-to-face supervision;
  - b. Verification of a passing score on the board-approved national examination; and

c. Documentation of applicant's out-of-state licensure where applicable.

**18VAC140-20-60. Education and experience requirements for licensed social worker.**

A. Education. The applicant shall hold a bachelor's or a master's degree from an accredited school of social work. Graduates of foreign institutions must establish the equivalency of their education to this requirement through the Foreign Equivalency Determination Service of the Council on Social Work Education.

B. Master's degree applicant. An applicant who holds a master's degree may apply for licensure as a licensed social worker without documentation of supervised experience.

B. Supervised experience. Supervised experience obtained prior to December 23, 1998, may be accepted towards licensure if this supervision met the requirements of the board which were in effect at the time the supervision was rendered.

C. Bachelor's degree applicant. Supervised experience in all settings obtained in nonexempt settings in Virginia without prior written board approval will not be accepted toward licensure. Supervision begun before [ November 28, 2007 November 26, 2008 ], that met the requirements of this section in effect prior to that date will be accepted until [ November 28, 2011 November 26, 2012 ].

~~1. Registration.~~ An individual who proposes to obtain supervised post master's degree experience in Virginia shall, prior to the onset of such supervision, register a supervision contract with the board as set forth in 18VAC140-20-50 B.

~~2. 1. Hours.~~ a. Bachelor's degree applicants shall have completed a minimum of 3,000 hours of full-time post-bachelor's degree experience or the equivalent in part-time experience in casework management and supportive services under supervision satisfactory to the board. A minimum of one hour of face-to-face supervision shall be provided each week for the period of supervision for a total of at least 100 hours.

~~b. 2.~~ Experience shall be acquired in no less than two nor more than four years from the beginning of the supervised experience.

~~C. D.~~ Requirements for supervisors.

1. The supervisor providing supervision shall be hold an active, unrestricted license as a licensed social worker with a master's degree, or a licensed social worker with a bachelor's degree and at least three years of postlicensure social work experience or a licensed clinical social worker in the jurisdiction in which the social work services are being rendered. If this requirement places an undue burden on the applicant due to geography or disability, the board may consider individuals with comparable qualifications.

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2. The supervisor shall:

- a. Be responsible for the social work practice of the prospective applicant once the supervisory arrangement is accepted by the board;
- b. Review and approve the assessment and service plan of a representative sample of cases assigned to the applicant during the course of supervision. The sample should be representative of the variables of gender, age, assessment, length of service and casework method within the client population seen by the applicant. It is the applicant's responsibility to assure the representativeness of the sample that is presented to the supervisor. The supervisor shall be available to the applicant on a regularly scheduled basis for supervision. The supervisor will maintain documentation, for five years post supervision, of which clients were the subject of supervision;
- c. Provide supervision only for those casework management and support services activities for which the supervisor has determined the applicant is competent to provide to clients;
- d. Provide supervision only for those activities for which the supervisor is qualified; and
- e. Evaluate the supervisee in the areas of professional ethics and professional competency.

3. Supervision between members of the immediate family (to include spouses, parents, and siblings) will not be approved.

~~D. Supervision requirements for applicants in exempt practice. Individuals may obtain the required supervised experience without registration of supervision provided such experience:~~

- ~~1. Is obtained in an exempt practice; and~~
- ~~2. Meets all other requirements of the board for supervised experience as set forth in this section.~~

## **18VAC140-20-105. Continued competency requirements for renewal of an active license.**

A. Licensed clinical social workers shall be required to have completed a minimum of 30 contact hours of continuing education and licensed social workers shall be required to have completed a minimum of 15 contact hours of continuing education for each biennial licensure renewal. A minimum of two of those hours must pertain to the standards of practice and laws governing the profession of social work in Virginia, or the Code of Ethics of one of the social work professional associations listed under subdivision B 1 d.

1. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior

to the renewal date. Such extension shall not relieve the licensee of the continuing education requirement.

2. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee such as temporary disability, mandatory military service, or officially declared disasters.

B. Hours may be obtained from a combination of board-approved activities in the following ~~three~~ two categories:

1. Category I. Formally Organized Learning Activities. A minimum of 20 hours for licensed clinical social workers or 10 hours for licensed social workers shall be documented in this category, which shall include one or more of the following:

- a. Regionally accredited university or college academic courses in a behavioral health discipline. A maximum of 15 hours will be accepted for each academic course.
- b. Continuing education programs offered by universities or colleges accredited by the Council on Social Work Education.
- c. Workshops, seminars, conferences, or courses in the behavioral health field offered by federal, state or local social service agencies, public school systems or licensed health facilities and licensed hospitals.

d. Workshops, seminars, conferences or courses in the behavioral health field offered by an individual or organization that has been certified or approved by one of the following:

- (1) The Child Welfare League of America and its state and local affiliates.
- (2) The National Association of Social Workers and its state and local affiliates.
- (3) The Association of Black Social Workers and its state and local affiliates.
- (4) The Family Service Association of America and its state and local affiliates.
- (5) The Clinical Social Work Federation and its state and local affiliates.
- (6) Individuals or organizations who have been approved as continuing education sponsors by the Association of Social Work Boards or any state social work board.

2. Category II. Individual Professional Activities. A maximum of 10 of the required 30 hours for licensed clinical social workers or a maximum of five of the required 15 hours for licensed social workers may be earned in this category, which shall include one or more of the following:

- a. Participation in an Association of Social Work Boards item writing workshop. (Activity will count for a maximum of two hours.)
- b. Publication of a professional social work-related book or initial preparation/presentation of a social work-related course. (Activity will count for a maximum of 10 hours.)
- c. Publication of a professional social work-related article or chapter of a book, or initial preparation/presentation of a social work-related in-service training, seminar or workshop. (Activity will count for a maximum of five hours.)
- d. Provision of a continuing education program sponsored or approved by an organization listed under Category I. (Activity will count for a maximum of two hours and will only be accepted one time for any specific program.)
- e. Field instruction of graduate students in a Council on Social Work Education-accredited school. (Activity will count for a maximum of two hours.)
- f. Serving as an officer or committee member of one of the national professional social work associations listed under subdivision B 1 d of this section. (Activity will count for a maximum of two hours.)
- g. Attendance at formal staffings at federal, state or local social service agencies, public school systems or licensed health facilities and licensed hospitals. (Activity will count for a maximum of five hours.)
- h. Independent or group study including listening to audio tapes, viewing video tapes, reading, professional books or articles. (Activity will count for a maximum of five hours.)

~~Part V  
Committees~~

**18VAC140-20-140. ~~Examining and advisory committees. (Repealed.)~~**

~~The board may establish advisory and examining committees to assist it in carrying out statutory responsibilities.~~

- ~~1. The committees may assist in evaluating the professional qualifications of applicants and candidates for licensure and renewal of licenses and in other matters the board deems necessary.~~
- ~~2. The committees may assist in the evaluation of the mental or emotional competency, or both, of any licensee or applicant for licensure when such competence is an issue before the board.~~

~~Part V  
Standards of Practice~~

**18VAC140-20-150. Professional conduct.**

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Regardless of the delivery method, whether in person, by telephone or electronically, these standards shall apply to the practice of social work.

B. Persons licensed as social workers and clinical social workers shall:

- ~~1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare.~~
- 1. Be able to justify all service services rendered to or on behalf of clients as necessary for diagnostic or therapeutic purposes.
- 2. Provide for continuation of care when services must be interrupted or terminated.
- 3. Practice only within the competency areas for which they are qualified by education ~~or~~ and experience, ~~or both.~~
- 4. Report to the board known or suspected violations of the laws and regulations governing the practice of social work.
- 5. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services.
- 6. Ensure that clients are aware of fees and billing arrangements before rendering services.
- 7. Inform clients of potential risks and benefits of services and the limitations on confidentiality and ensure that clients have provided informed written consent to treatment.
- ~~7. 8. Keep confidential their therapeutic relationships with clients and disclose client records to others only with written consent of the client, with the following exceptions: (i) when the client is a danger to self or others; or (ii) as required by law.~~
- ~~8. 9. When advertising their services to the public, ensure that such advertising is neither fraudulent nor misleading.~~
- ~~9. Not engage in dual relationships with clients, former clients, supervisees, and supervisors that might compromise that person's well-being, impair the social worker's or supervisor's objectivity and professional judgment or increase the risk of exploitation, to include, but is not limited to, such activities as counseling close friends, sexual partners, employees or relatives, and engaging in business relationships with clients. Sexual~~

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~~contact or conduct of a sexual nature during the course of professional services and for a period of not less than two years following cessation or termination of professional services with a client or those included in the provision of collateral therapeutic services shall be prohibited. Thereafter, the licensee shall bear the burden of demonstrating that there has been no exploitation regardless of that person's consent to, initiation of or participation in the sexual contact or conduct of a sexual nature with the practitioner.~~

~~10. Maintain clinical records on each client. The record shall include identifying information to substantiate diagnosis and treatment plan, client progress, and termination. The clinical record shall be preserved for at least five years post termination. As treatment requires and with the written consent of the client, collaborate with other health or mental health providers concurrently providing services to the client.~~

~~11. Ensure that clients have provided informed consent to treatment. Refrain from undertaking any activity in which one's personal problems are likely to lead to inadequate or harmful services.~~

~~12. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.~~

C. In regard to client records, persons licensed by the board shall comply with provisions of § 32.1-127.1:03 of the Code of Virginia on health records privacy and shall:

1. Maintain written or electronic clinical records for each client to include identifying information and assessment that substantiates diagnosis and treatment plans. Each record shall include a diagnosis and treatment plan, progress notes for each case activity, information received from all collaborative contacts and the treatment implications of that information, and the termination process and summary.

2. Maintain client records securely, inform all employees of the requirements of confidentiality, and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality.

3. Disclose or release records to others only with clients' expressed written consent or that of their legally authorized representative or as mandated by law.

4. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from clients or their legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third-party observation, or (iv) using identifiable client records and clinical materials in teaching, writing or public presentations.

5. Maintain client records for a minimum of six years or as otherwise required by law from the date of termination of the therapeutic relationship with the following exceptions:

a. At minimum, records of a minor child shall be maintained for six years after attaining the age of majority or 10 years following termination, whichever comes later.

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time.

c. Records that have been transferred to another mental health professional or have been given to the client or his legally authorized representative.

D. In regard to dual relationships, persons licensed by the board shall:

1. Not engage in a dual relationship with a client or a former client that could impair professional judgment or increase the risk of harm to the client. (Examples of such a relationship include, but are not limited to, familial, social, financial, business, bartering, or a close personal relationship with a client.) Social workers shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs.

2. Not have any type of sexual intimacies with a client or those included in collateral therapeutic services, and not provide services to those persons with whom they have had a sexual relationship. Social workers shall not engage in sexual intimacies with a former client within a minimum of five years after terminating the professional relationship. Social workers who engage in such a relationship after five years following termination shall have the responsibility to examine and document thoroughly that such a relationship did not have an exploitive nature, based on factors such as duration of therapy, amount of time since therapy, termination circumstances, client's personal history and mental status, adverse impact on the client. A client's consent to, initiation of or participation in sexual behavior or involvement with a social worker does not change the nature of the conduct nor lift the regulatory prohibition.

3. Not engage in any sexual relationship or establish a therapeutic relationship with a current supervisee or student. Social workers shall avoid any nonsexual dual relationship with a supervisee or student in which there is a risk of exploitation or potential harm to the supervisee or student, or the potential for interference with the supervisor's professional judgment.

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

5. Not engage in a personal relationship with a former client in which there is a risk of exploitation or potential harm or if the former client continues to relate to the social worker in his professional capacity.

**18VAC140-20-160. Grounds for disciplinary action or denial of issuance of a license.**

~~Action by the board to deny, revoke, suspend or decline to renew a license shall be in accordance with the following~~ The board may refuse to admit an applicant to an examination; refuse to issue a license to an applicant; or reprimand, impose a monetary penalty, place on probation, impose such terms as it may designate, suspend for a stated period of time or indefinitely, or revoke a license for one or more of the following grounds:

1. Conviction of a felony or of a misdemeanor involving moral turpitude;
2. Procurement of license by fraud or misrepresentation;
3. Conducting one's practice in such a manner so as to make the practice a danger to the health and welfare of one's clients or to the public. In the event a question arises concerning the continued competence of a licensee, the board will consider evidence of continuing education.
4. Being unable to practice social work with reasonable skill and safety to clients by reason of illness, excessive use of alcohol, drugs, narcotics, chemicals or any other type of material or as a result of any mental or physical condition;
5. Conducting one's practice in a manner contrary to the standards of ethics of social work or in violation of 18VAC140-20-150, standards of practice;
6. Performing functions outside the board-licensed area of competency;
7. Failure to comply with the continued competency requirements set forth in 18VAC140-20-105; and
8. Violating or aiding and abetting another to violate any statute applicable to the practice of social work or any provision of this chapter.

VA.R. Doc. No. R07-120; Filed October 7, 2008, 4:26 p.m.

**BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE SEWAGE SYSTEM PROFESSIONALS**

**Final Regulation**

REGISTRAR'S NOTICE: The following model public participation guidelines 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: 18VAC160-10. Public Participation Guidelines (repealing 18VAC160-10-10 through 18VAC160-10-90).**

**18VAC160-11. Public Participation Guidelines (adding 18VAC160-11-10 through 18VAC160-11-110).**

Statutory Authority: §§ 2.2-4007.02 and 54.1-201 of the Code of Virginia.

Effective Date: November 26, 2008.

Agency Contact: David E. Dick, Executive Director, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (804) 527-4297, or email waterwasteoper@dpor.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 actions; (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

**18VAC160-11-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of

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the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

## **18VAC160-11-20. 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 for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, 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](http://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

#### **18VAC160-11-30. 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.

#### **18VAC160-11-40. 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 18VAC160-11-30, 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

**18VAC160-11-50. 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.

**18VAC160-11-60. 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.

**18VAC160-11-70. 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

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2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

## **18VAC160-11-80. 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.

## **18VAC160-11-90. 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.

## **18VAC160-11-100. 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.

## **18VAC160-11-110. 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. R09-1496; Filed October 8, 2008, 11:40 a.m.

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## TITLE 22. SOCIAL SERVICES

### CHILD DAY-CARE COUNCIL

#### Final Regulation

**REGISTRAR'S NOTICE:** The following model public participation guidelines 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:** **22VAC15-10. Public Participation Guidelines (repealing 22VAC15-10-10 through 22VAC15-10-70).**

**22VAC15-11. Public Participation Guidelines (adding 22VAC15-11-10 through 22VAC15-11-110).**

**Statutory Authority:** §§ 2.2-4007.02 and 63.2-217 of the Code of Virginia.

**Effective Date:** January 1, 2009.

**Agency Contact:** L. Richard Martin, Jr., Manager, Department of Social Services, Office of Legislative and Regulatory Affairs, 7 North Eighth Street, Room 5214, Richmond, Virginia 23219, telephone (804) 726-7902, FAX (804) 726-7906, TTY (800) 828-1120, or email richard.martin@dss.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 actions; (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**

**22VAC15-11-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Child Day-Care Council. 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).

**22VAC15-11-20. 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 Child Day-Care Council, 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](http://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**

**22VAC15-11-30. 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.

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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.

## **22VAC15-11-40. 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 22VAC15-11-30, 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

## **22VAC15-11-50. 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.

## **22VAC15-11-60. 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.

**22VAC15-11-70. 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.

**22VAC15-11-80. 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.

**22VAC15-11-90. 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.

**22VAC15-11-100. 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.

**22VAC15-11-110. 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. R09-1501; Filed October 2, 2008, 3:08 p.m.

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## DEPARTMENT OF REHABILITATIVE SERVICES

### Proposed Regulation

**Title of Regulation:** 22VAC30-40. Protection of Participants in Human Research (amending 22VAC30-40-10, 22VAC30-40-30 through 22VAC30-40-150; adding 22VAC30-40-160).

**Statutory Authority:** §§ 51.5-14 and 51.5-14.01 of the Code of Virginia.

**Public Hearing Information:** No public hearings are scheduled.

**Public Comments:** Public comments may be submitted until December 27, 2008.

**Agency Contact:** Vanessa S. Rakestraw, Policy Analyst, Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7612, FAX (804) 662-7696, TTY (800) 464-9950, or email [vanessa.rakestraw@drs.virginia.gov](mailto:vanessa.rakestraw@drs.virginia.gov).

**Basis:** Section 51.5-14.01 of the Code of Virginia requires the Commissioner of the Department of Rehabilitative Services to promulgate regulations pursuant to the Administrative Process Act to effectuate the provisions of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia for human research conducted or authorized by the department, any sheltered workshop, or independent living center, or Woodrow Wilson Rehabilitation Center.

**Purpose:** These regulations will provide a basis for the Department of Rehabilitative Services to oversee human subjects research involving the Department of Rehabilitative Services, the Woodrow Wilson Rehabilitation Center, sheltered workshops, and independent living centers. The regulations provide guidelines for initiating and conducting research in a manner that will protect human subjects from harm. They also provide for a human research review committee to review and approve human research activities based on these established guidelines. The regulations also delimit the responsibilities of the human research review committee and delimit its reporting requirements. All of these guidelines are essential to protecting the health, safety and welfare of citizens involved in human research.

**Substance:** Modifications to these regulations include:

1. Adding definitions for the following terms: assent; agent; covered entities; guardian; human research review committee; human subject; human subject research; identifiable private information; informed consent; minor; parent; and permission;
2. Changing the definitions of the following terms to mirror those contained in 45 CFR 46.102: interaction; intervention; institution; legally authorized representative; minimal risk; private information; and research;

3. Changing the definition of sheltered workshop so that only those vocational rehabilitation services programs that have a vendor relationship with DRS and are not operated by a community services boards are included for the purposes of these regulations;

4. Deleting the definition of "institution";

5. Making minor language changes to ensure consistency with 45 CFR 46.101 et seq.;

6. Removing the option of independent living centers and sheltered workshops to establish their own human research review committee or to affiliate with other independent living centers and sheltered workshops to establish a central human research review committee. Rather, independent living centers and sheltered workshops must affiliate with the DRS human research review committee as intended in § 51.5-14.01 of the Code of Virginia;

7. Changing procedures for obtaining the informed written consent of prospective research volunteers to ensure consistency with 45 CFR 46.109 and 45 CFR 46.111;

8. Changing the composition of the human research review committee to ensure consistency with 45 CFR 46.107;

9. Adding a section governing inclusion of minors as research volunteers using the language from 45 CFR 46.401 et seq. and 34 CFR 97.101 et seq.; and

10. Changing the kinds of research that may receive expedited review and expedited review procedures to mirror 45 CFR 45.110.

**Issues:** This regulatory action serves to protect the welfare of human participants in research. The regulation poses no disadvantages to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. These regulations provide a basis for the Department of Rehabilitative Services (Department) to oversee human subjects research involving the Department, the Woodrow Wilson Rehabilitation Center, sheltered workshops, and independent living centers (covered entities). The Department proposes to make several changes to these regulations to reflect federal law. The new language reflects the federal requirements that have been implemented in Virginia since 2005. Additionally, the Department proposes to establish a specified deadline of 45 days after the end of each state fiscal year for covered entities to send a written report to the Department, add clarifying language, and revise definitions. The proposed regulations also preclude covered entities from establishing their own human research review committee (HRRC) or to affiliate with other covered entities to establish a central HRRC in lieu of using the Department's HRRC.

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

Estimated Economic Impact. Other than clarifications and definitional language that does not affect requirements, most of the proposed amendments to these regulations reflect changes to federal law that have been applied in Virginia since 2005. These proposed amendments will thus have no impact on requirements, but may produce a small benefit through clarification of the rules to the public.

The current regulations permit covered entities to use their own or a joint HRRC in lieu of the Department's HRRC. According to the Department, no covered entity has ever done so, nor has any indicated an intention to do so in the future. Thus, the proposal to preclude covered entities from establishing their own HRRC should have no impact.

The Department also proposes to require that

No later than 45 days after the end of each state fiscal year, Woodrow Wilson Rehabilitation Center, sheltered workshops and independent living centers shall send a written report to the commissioner giving assurance that either all human subjects research conducted during the fiscal year was reviewed and approved by the department's HRRC prior to implementation of that research or that no human subjects research was conducted during that state fiscal year.

Currently, the covered entities are required to send such reports, but no deadline is specified. According to the Department all covered entities have in practice complied with sending their reports within 45 days after the end of each state fiscal year when prompted. Thus, this proposal will not practically create a new cost for covered entities, but will produce a small benefit by clarifying to institutions when the Department actually needs the reports and may result in less time spent by Department staff contacting covered entities.

Businesses and Entities Affected. These regulations potentially affect the Woodrow Wilson Rehabilitation Center, the 71 private sheltered workshops in Virginia, the 16 independent living centers in the Commonwealth, and the clients and staff at these covered entities.<sup>1</sup>

Localities Particularly Affected. The proposed regulations affect localities throughout the Commonwealth.

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

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

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

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

Real Estate Development Costs. The proposed amended language will not 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.

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<sup>1</sup> Data Source: Virginia Department of Rehabilitative Services

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Rehabilitative Services concurs with the economic impact analysis for 22VAC-30-40 completed on March 17, 2008.

Summary:

*These regulations provide a basis for the Department of Rehabilitative Services (DRS) to oversee human subjects research involving the Department of Rehabilitative Services, the Woodrow Wilson Rehabilitation Center, sheltered workshops, and independent living centers. The proposed amendments: (i) make minor changes in language to ensure consistency with 45 CFR 46.101 et seq.; (ii) change the definition of sheltered workshop so that only those vocational rehabilitation service programs that have a vendor relationship with the department and are not operated by a community services board are covered by this regulation; (iii) provide that independent living centers and sheltered workshops no longer have the option to establish their own human research review*

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*committee or to affiliate with other centers or workshops to establish a central human research committee but are required to affiliate with the DRS human research review committee; (iv) change the procedures for obtaining the informed written consent of prospective research subjects to ensure consistency with the requirements of federal regulations; (v) change the composition of the human research review committee that reviews research proposals to determine if they meet the requirements of this regulation to ensure consistency with federal requirements; (vi) add a new section that governs the inclusion of minors as research subjects; and (vii) change procedures for expedited review and the description of research that may receive expedited review to reflect existing federal regulations.*

## 22VAC30-40-10. Definitions.

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

"Affiliated with the ~~institution covered entity~~" means employed by the ~~institution covered entity~~ or a member of a household containing an employee of the ~~institution covered entity~~.

"Agent" means any individual performing department-designated activities or exercising department-delegated authority or responsibility.

"Assent" means a child's affirmative agreement to participate in research. Mere failure to object should not, absent affirmative agreement, be construed as assent.

"Commissioner" means the Commissioner of the Department of Rehabilitative Services.

"Covered entity" means the Department of Rehabilitative Services, Woodrow Wilson Rehabilitation Center, sheltered workshops, or independent living centers.

"Department" means the Department of Rehabilitative Services.

"Guardian" means an individual who is authorized under applicable state or local law to consent on behalf of a minor to general medical care.

"Human Research Review Committee" or "HRRC" means the committee established in accordance with and for the purposes expressed in this chapter.

"HRRC approval" means the determination of the HRRC that the research has been reviewed and may be conducted within the constraints set forth by the HRRC and by other department, state and federal requirements.

"Human participant or human subject" means a living individual about whom an investigator (whether professional or student) conducting research obtains:

(i) ~~data~~ 1. Data through intervention or interaction with the individual; or

(ii) ~~identifiable~~ 2. Identifiable private information.

~~"Human research" means any systematic investigation which utilizes human participants who may be exposed to physical or psychological injury as a consequence of participation and which departs from the application of established and accepted therapeutic methods appropriate to meet the participant's needs.~~

"Human subject research" means a systematic investigation, experiment, study, evaluation, demonstration or survey designed to develop or contribute to general knowledge (basic research) or specific knowledge (applied research) in which a living individual about whom an investigator (whether professional or student) conducting research obtains data through intervention or interaction with the individual or obtains identifiable private information.

"Identifiable private information" means information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information that has been provided for specific purposes by an individual and that the individual can reasonably expect will not be made public (for example, a medical record, social security number). Private information must be individually identifiable (i.e., the identity of the subject is or may readily be ascertained by the investigator or associated with the information) to constitute research involving human subjects.

"Independent living center" means a consumer-controlled, community-based, cross disability, nonresidential private nonprofit agency that:

1. Is designed and operated within a local community by individuals with disabilities; and
2. Provides an array of independent living services.

"Informed consent" means a process by which the investigator fully explains the research activities, ensures that the prospective subject has sufficient opportunity to ask questions, and has sufficient time to make a decision whether or not to participate in the research prior to signing the HRRC-approved written consent document. Informed consent must be prospectively obtained without coercion, include all of the basic elements of informed consent as specified in 22VAC30-40-100 B, be legally effective, contain no exculpatory language, and as required, include the additional elements of informed consent specified in 22VAC30-40-100 C.

"Institution" means ~~the department, any center of independent living, sheltered workshop, the Woodrow Wilson Rehabilitation Center, or any facility or program operated, funded, or licensed by the department~~ any public or private entity or agency (including federal, state, and other agencies).

"Interaction" ~~includes~~ means communication or interpersonal contact between investigator and ~~participant~~ subject.

"Intervention" ~~includes~~ means both physical procedures by which data are gathered (for example, venipuncture) and manipulations of the ~~participant~~ subject or ~~participant's~~ subject's environment that are performed for research purposes.

"Investigator" means the person, whether professional or student, who conducts the research.

"Legally authorized representative," as defined in § 32.1-162.16 of the Code of Virginia, means ~~the~~, in the following specified order of priority:

1. The parent or parents having custody of a prospective ~~participant~~, the subject who is a minor;
2. The agent appointed under an advance directive, as defined in § 54.1-2982 of the Code of Virginia, executed by the prospective subject, provided the advance directive authorizes the agent to make decisions regarding the prospective subject's participation in human research;
3. The legal guardian of a prospective ~~participant~~, subject;
4. The spouse of the prospective subject, except where a suit for divorce has been filed and the divorce decree is not yet final;
5. An adult child of the prospective subject;
6. A parent of the prospective subject when the subject is an adult;
7. An adult brother or sister of the prospective subject; or
- ~~any~~ 8. Any person or judicial or other body authorized by law or regulation to consent on behalf of a prospective ~~participant~~ subject to such ~~person's~~ subject's participation in the particular human research.

For the purposes of this definition, any person authorized by law or regulation to consent on behalf of a prospective ~~participant~~ subject to ~~his~~ such subject's participation in the particular human research shall include an attorney-in-fact appointed under a durable power of attorney, to the extent the power grants the authority to make such a decision. The attorney-in-fact shall not be employed by the person, institution or agency conducting the human research ~~and shall not be authorized to consent to nontherapeutic medical research.~~ No official or employee of the institution or agency conducting or authorizing the research shall be qualified to act as a legally authorized representative.

"Minimal risk" means that the ~~risks of harm anticipated in the proposed research are not greater, considering probability and magnitude, of harm or discomfort anticipated in the research are not greater in and of themselves than those~~

ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

"Minor," as defined in § 1-207 of the Code of Virginia, means an individual who is less than 18 years of age.

"Nontherapeutic research" means human subject research in which there is no reasonable expectation of direct benefit to the physical or mental condition of the ~~participant~~ subject.

"Parent" means a minor's biological or adoptive parent.

"Permission" means the agreement of parent(s) or a legally authorized representative to the participation of their minor or ward in research.

"Private information" ~~includes~~ means information about the ~~human participant's~~ behavior that occurs when in a context in which an individual can reasonably expect that no observation or recording is taking place, ~~and~~ or information ~~which that~~ has been provided for specific purposes by the ~~human participant~~ individual and that the ~~participant~~ individual can reasonably expect will not be made public (for example, a medical record). Private information must be individually identifiable (i.e., the identity of the human participant is or may readily be ascertained by the investigator or associated with the information) in order for obtaining the information to constitute research involving human participants.

"Research" means a systematic investigation, ~~including research development, testing, and evaluation,~~ designed to develop or contribute to ~~general~~ generalizable knowledge (basic research) or specific knowledge (applied research). Activities ~~which that~~ meet this definition constitute research for purposes of this chapter, whether or not they are supported or funded under a program ~~which that~~ is considered research for other purposes. For example, some "demonstration" and "service" programs may include research activities.

~~"Research investigator" means the person, whether professional or student, who conducts the research.~~

"Sheltered workshop" means ~~a facility based community rehabilitation~~ a program that (i) provides directly or facilitates the provision of one or more ~~of the following~~ vocational rehabilitation services enumerated in 34 CFR 361.5(b)(9)(i) to individuals with disabilities to enable them to maximize their opportunities for employment, including career advancement; (ii) has a vendor relationship with the department; and (iii) is not operated by a community services board.

- ~~1. Medical, psychiatric, psychological, social, and vocational services that are provided under one management;~~
- ~~2. Testing, fitting, or training in the use of prosthetic and orthotic devices;~~
- ~~3. Recreational therapy;~~

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4. Physical and occupational therapy;
5. Speech, language, and hearing therapy;
6. Psychiatric, psychological, and social services, including positive behavior management;
7. Assessment for determining eligibility and vocational rehabilitation needs;
8. Rehabilitation technology;
9. Job development, placement, and retention services;
10. Evaluation or control of specific disabilities;
11. Orientation and mobility services for individuals who are blind;
12. Extended employment;
13. Psycho-social rehabilitation services;
14. Supported employment services and extended services;
15. Services to family members when necessary to the vocational rehabilitation of the individual;
16. Personal assistance services; or
17. Services similar to the services described in subdivisions 1 through 16.

"Voluntary informed consent" means the knowing, written consent of an individual, or the individual's legally authorized representative, so situated as to be able to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress or other form of constraint or coercion. With regard to the conduct of human research, the basic elements of information necessary to such consent shall include in writing:

1. A statement that the study involves research, and a reasonable and comprehensible explanation to the human participant of the procedures that the researcher will follow and their purposes, including identification of any procedures which are experimental; the expected duration of the human participant's participation; and a statement describing the extent, if any, to which confidentiality of records identifying the participant will be maintained, and if any data from this study are published, the individual will not be identified without his written permission;
2. A description of any attendant discomforts and risks to the human participant which may reasonably be expected and a statement that there may be other risks not yet identified;
3. A description of any benefits to the human participant or to others which may reasonably be expected;
4. A disclosure of any appropriate alternative procedures or therapies that might be advantageous for the human participant;

5. An offer to answer and answers to any inquiries by any individual concerning the procedure;
6. A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the human participant is otherwise entitled, and the human participant may discontinue participation at any time without penalty or loss of benefits to which he is otherwise entitled;
7. An explanation of who to contact for answers to pertinent questions about the research and human research participants' rights, and who to contact in the event of a research related injury;
8. For research involving more than minimal risk, an explanation as to whether any compensation or medical care is available if injury occurs and, if so, what it consists of or where further information may be obtained; and
9. An explanation of any costs or compensation which may accrue to the person and, if applicable, the availability of third party reimbursement for the proposed procedures or protocols.

## **22VAC30-40-30. Applicability.**

This chapter shall apply to the Department of Rehabilitative Services, Woodrow Wilson Rehabilitation Center, any sheltered workshop or workshops and independent living center centers, and any facility operated, funded or licensed by the department which conducts or which proposes to conduct or authorize research which uses human participants known as covered entities.

## **22VAC30-40-40. Policy General provisions for conducting human subjects research.**

A. No human subjects research may be conducted by a covered entity without the voluntary informed consent of the participant subject or his the subject's legally authorized representative. The required elements of informed consent are provided in 22VAC30-40-100. The consent of the participant human subject or his the human subject's legally authorized representative to participate in the research must be documented in writing and supported by the signature of a witness not involved in the conduct of the research, except as provided for in 22VAC30-40-100 F J. The research investigator shall sign ensure that a knowledgeable member of the research team signs and provide participants provides human subjects of a research study project with a copy of the written, voluntary informed consent statement document as defined in 22VAC30-40-10 22VAC30-40-100 B. The investigator shall make arrangements for those who need special assistance in understanding the consequences of participating in the research.

B. Each human subjects research study project shall be approved by a committee composed of representatives of varied backgrounds who shall assure the competent,

~~complete, and professional review of human research activities the department's HRRC. An institution may establish its own research review committee, it may work with other institutions to establish a single committee, or it may use the department's established committee.~~

~~C. Nontherapeutic research using institutionalized participants is prohibited unless the research review committee HRRC determines that such nontherapeutic research will not present greater than minimal risk to the human participant subjects.~~

~~D. The research investigator shall be required to notify all human participants in research subjects of the risks caused by the research which that are discovered after the research has concluded.~~

~~E. 22VAC30-40-160 applies to all research involving minors as subjects conducted or supported by the covered entity. In addition to other responsibilities assigned to the HRRC under 22VAC30-40-160, the HRRC shall review research covered by 22VAC30-40-160 and approve only research that satisfies the conditions of all applicable sections of this chapter. Exemptions in subdivisions 1 and 3 through 6 of 22VAC30-40-80 are applicable to 22VAC30-40-160. The exemption in subdivision 2 of 22VAC30-40-80 regarding educational tests is also applicable to 22VAC30-40-160. However, the exemption in subdivision 2 of 22VAC30-40-80 for research involving survey or interview procedures or observations of public behavior does not apply to research covered by 22VAC30-40-160, except for research involving observation of public behavior when the investigator or investigators do not participate in the activities being observed.~~

~~F. Cooperative research projects are those projects covered by this chapter that involve a covered entity in conjunction with an institution(s). In the conduct of cooperative research projects, the covered entity and each institution are responsible for safeguarding the rights and welfare of human subjects and for complying with this chapter. With the approval of the commissioner, a covered entity participating in a cooperative project may enter into a joint review arrangement, rely upon the review of another qualified institutional review board (IRB), or make similar arrangements for avoiding duplication of effort.~~

~~G. In the event research is undertaken without the intention of involving human subjects, but it is later proposed to involve human subjects in the research, the research shall first be reviewed and approved by the HRRC, as provided in this chapter, a certification submitted by the covered entity to the commissioner, and final approval given to the proposed change by the commissioner.~~

~~H. With respect to any research project or any class of research projects, the commissioner may impose additional conditions prior to or at the time of approval when, in the~~

~~judgment of the commissioner, additional conditions are necessary for the protection of human subjects.~~

~~I. In reviewing proposed research projects, the HRRC shall consider the requirements of review stated in 22VAC30-40-70.~~

#### **22VAC30-40-50. Certification process.**

~~A. Institutions seeking to conduct or sponsor human research are required to submit statements to the research review committee assuring that all human research activities will be reviewed and approved by a research review committee. Institutions shall report annually No later than 45 days after the end of each state fiscal year, Woodrow Wilson Rehabilitation Center, sheltered workshops and independent living centers shall send a written report to the commissioner giving assurance that a committee exists and is functioning. These reports should include a list of committee members, their qualifications for service on the committee, their institutional affiliation and a copy of the minutes of committee meetings either all human subjects research conducted during the fiscal year was reviewed and approved by the department's HRRC prior to implementation of that research or that no human subjects research was conducted during that state fiscal year.~~

~~B. Prior to the initiation of a human research project, institutions At the time that the research is approved by the HRRC, the HRRC chairperson shall also send to the commissioner a description of the research project to be undertaken, which shall include a statement of the criteria for inclusion of a participant prospective human subjects in the research project, a description of what will be done to the prospective human participants subjects, and a copy of the informed consent statement the type of review performed by the HRRC.~~

~~C. The commissioner may inspect the records of the research committee department's HRRC.~~

~~D. The chairman of the research committee shall report as soon as possible to the head of the institution and to the commissioner any violation of the research protocol which led the committee to either suspend or terminate the research. The HRRC shall have authority to suspend or terminate approval of research that is not being conducted in accordance with the HRRC's requirements or that has been associated with unexpected serious harm to subjects. Any suspension or termination of approval shall include a statement of the reasons for the HRRC's action and shall be reported promptly to the research investigator, the commissioner, the head(s) of other appropriate covered entities, and in the case of cooperative research, the institutional officials responsible for human subjects research.~~

~~E. Research covered by this chapter that has been approved by the HRRC may be subject to further appropriate review and approval or disapproval by officials of the covered~~

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entities. However, those officials may not approve the research if it has not been approved by the HRRC.

## **22VAC30-40-60. Composition of ~~research~~ review committees the HRRC.**

A. ~~Each research committee~~ The HRRC shall have at least five members, appointed by the head of the institution or department commissioner, with varying backgrounds to provide promote complete and adequate review of activities research projects commonly conducted by the institution covered entities. The committee HRRC shall be sufficiently qualified through the research experience, and expertise, and diversity of its members, and the diversity of the members, including consideration of race, gender, and cultural background, and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of participants in human research subjects. In addition to possessing the professional competence necessary to review specific activities research projects, the committee must HRRC shall be able to ascertain the acceptability of applications and proposals proposed research in terms of institutional the department's commitments and regulations, applicable law, standards of professional conduct and practice, and community attitudes. If a committee the HRRC regularly reviews research that has an impact on an institutionalized or other involves a vulnerable category of participants subjects, including residents of mental health or mental retardation facilities, the committee shall have in its membership one or more individuals who are primarily concerned with the welfare of these participants and who have appropriate experience to serve in that capacity such as children, pregnant women, or persons with mental disabilities, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these subjects. Additional membership requirements may be imposed on the HRRC by 34 CFR 350.4(c) and 356.3(c) for research sponsored by the National Institute on Disability and Rehabilitation Research. When minors with disabilities or persons with mental disabilities are purposefully included as research subjects, the HRRC's membership must include at least one person who is primarily concerned with the welfare of these research subjects.

B. ~~No committee shall~~ Every nondiscriminatory effort will be made to ensure that the HRRC does not consist entirely of men or entirely of women, or including the department's consideration of qualified persons of both sexes, so long as no selection is made to the HRRC on the basis of gender. The HRRC may not consist entirely of members of one profession.

C. ~~Each committee~~ The HRRC shall include at least one of the following:

1. ~~One~~ At least one member whose primary concerns are in nonscientific areas (e.g., lawyers, ethicists, members of the clergy);
2. ~~One~~ At least one member who is not otherwise affiliated with ~~the institution~~ any covered entity and who is not part of the immediate family of a person who is affiliated with ~~the institution~~ covered entity; and
3. ~~One consumer; and~~
4. ~~One~~ 3. At least one member whose primary concerns are in the scientific areas.

D. ~~No member of a committee~~ The HRRC shall not have a member participate in the committee's HRRC's initial or continuing review of any project in which the member is directly involved or for which he has administrative approval authority has a conflicting interest, except to provide information requested by the committee HRRC. The committee HRRC has responsibility for determining whether a member has a conflict of conflicting interest with any study. The committee HRRC member shall be replaced in the case of a conflict of conflicting interest resulting in a decrease of the committee HRRC below five persons members.

E. ~~A committee~~ The HRRC may, at its discretion, invite individuals with competence in special areas to assist in the review of complex issues which require expertise beyond or in addition to that available on the committee HRRC. These individuals may not vote with the committee.

F. A quorum of the ~~committee~~ HRRC shall consist of a majority of its members including at least one member whose primary concerns are in nonscientific areas. Except when exempt or expedited review procedures are used, proposed research shall be reviewed at convened meetings at which a majority of members is present, including at least one member whose primary concerns are in nonscientific areas. In order for the research to be approved, it shall receive the approval of a majority of those members present at the meeting.

G. The ~~committee~~ HRRC and the institution department shall establish procedures and rules of operation necessary to fulfill the requirements of these regulations.

## **22VAC30-40-70. Elements of ~~each~~ committee's the HRRC's review process.**

A. ~~No human research shall be conducted or authorized by the Department of Rehabilitative Services, any independent living center, any sheltered workshop, or the Woodrow Wilson Rehabilitation Center unless the committee has reviewed and approved the proposed human research project giving consideration to:~~ The HRRC shall review and have authority to approve, require modifications in, or disapprove all research activities covered by this chapter.

~~1. The adequacy of the description of the potential benefits and risks involved and the adequacy of the methodology of the research;~~

~~2. The degree of the risk, and, if the research is nontherapeutic, whether it presents greater than minimal risk;~~

~~3. Whether the rights and welfare of the participants are adequately protected;~~

~~4. Whether the risks to the participants are outweighed by the potential benefits to them;~~

~~5. Whether the voluntary informed consent is to be obtained by methods that adequately and appropriately fulfill the requirements of these regulations and whether the written consent form is adequate and appropriate in both content and language for the particular research and for the particular participants of the research;~~

~~6. Whether the research investigators proposing to supervise or conduct the particular human research are appropriately competent and qualified;~~

~~7. Whether criteria for selection of participants are equitable, especially in research regarding the future development of mental or physical illness;~~

~~8. Whether the research conforms with such other requirements as the department may establish; and~~

~~9. Whether appropriate studies in nonhuman systems have been conducted prior to the involvement of human participants.~~

~~B. The committee shall review, at least annually, approved projects to ensure conformity with the approved proposal. The HRRC shall require that information given to prospective subjects as part of the informed consent process is in accordance with 22VAC30-40-100. The HRRC may require that information, in addition to that specifically mentioned in 22VAC30-40-100, be given to prospective subjects when, in the HRRC's judgment, the information would meaningfully add to the protection of the rights and welfare of subjects.~~

~~C. Research must be approved by the committee which has jurisdiction over the participant. When cooperating institutions conduct some or all of the research involving some or all of the participants, each cooperating institution is responsible for safeguarding the rights and welfare of human participants and for complying with this chapter, except that in complying with this chapter institutions may enter into joint review, rely upon the review of another qualified committee, or make similar arrangements aimed at avoiding duplication of effort. The committee chairperson may make such arrangements with the approval of a majority of the members present at a meeting of the committee. The HRRC shall require documentation of informed consent or may waive documentation in accordance with 22VAC30-40-100 J.~~

~~D. The committee HRRC shall consider research proposals within 45 days after submission of a complete application to the committee's chairman HRRC's chairperson. In order for the research to be approved, it shall receive the approval of a majority of those members present at a meeting in which a quorum exists. A committee The HRRC shall notify research investigators and the institution covered entity in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure committee HRRC approval.~~

~~E. The committee HRRC shall develop a written complaint description of the procedure procedures to be followed by a human participant subject who has a complaint concern(s) about a research project in which he is participating or has participated.~~

~~F. Any participant who has a complaint about a research project in which he is participating or has participated shall be referred to the chairperson of the committee HRRC who shall refer it to the committee HRRC to determine if there has been a violation of the research protocol as approved by the HRRC.~~

~~G. The committee shall require periodic reports. The frequency of such reports should reflect the nature and degree of risk of each research project.~~

~~H. If the HRRC decides to disapprove a research application, it shall include in its written notification a statement of the reasons for its decision and give the investigator an opportunity to respond in person or in writing.~~

~~I. The HRRC shall conduct continuing review of research covered by this chapter at intervals appropriate to the degree of risk, but not less than once per year, and shall have authority to observe or have a third party observe the consent process and the research.~~

~~J. In order to approve research covered by this chapter, the HRRC shall determine that all of the following requirements are satisfied:~~

~~1. Risks to subjects are minimized:~~

~~a. By using procedures that are consistent with sound research design and that do not unnecessarily expose subjects to risk; and~~

~~b. Whenever appropriate, by using procedures already being performed on the subjects for diagnostic or treatment purposes.~~

~~2. Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects and the importance of the knowledge that may reasonably be expected to result. In evaluating risks and benefits, the HRRC should consider only those risks and benefits that may result from the research (as distinguished from risks and benefits of the therapies subjects would receive even if not participating in~~

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the research). The HRRC should not consider possible long-range effects of applying knowledge gained in the research (for example, the possible effects of the research on public policy) as among those research risks that fall within the purview of its responsibility.

3. Selection of subjects is equitable. In making this assessment the HRRC should take into account the purposes of the research and the setting in which the research will be conducted and should be particularly cognizant of the special problems of research involving vulnerable populations, such as children, pregnant women, persons with mental disabilities, or economically or educationally disadvantaged persons.

4. Informed consent will be sought from each prospective subject or the subject's legally authorized representative in accordance with and to the extent required by 22VAC30-40-100.

5. Informed consent will be appropriately documented in accordance with and to the extent required by 22VAC30-40-100.

6. When appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the safety of subjects.

7. When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

8. When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as children, pregnant women, persons with mental disabilities, or economically or educationally disadvantaged persons, additional safeguards have been included in the project to protect the rights and welfare of these subjects.

## **22VAC30-40-80. Kinds of research exempt from committee review.**

Research activities in which the only involvement of human participants will be in one or more of the following categories are exempt from these regulations unless the research is covered by other sections of this chapter. The HRRC shall determine whether the proposed research project satisfies at least one exemption category in this section before the research can be conducted:

1. Research conducted in established or commonly accepted educational settings, involving commonly used normal educational practices, such as:

- a. Research on regular and special education instructional strategies; or
- b. Research on the effectiveness of or the comparison among instructional techniques, curriculum or classroom management methods.

~~2. Research involving solely the use and analysis of the results of standardized psychological, educational, diagnostic, aptitude, or achievement tests, if information taken from these sources is recorded in such a manner that participants cannot be reasonably identified, directly or through identifiers linked to the participants, of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless:~~

~~a. Information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and~~

~~b. Any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.~~

~~3. Research involving survey or interview procedures, unless responses are recorded in such a manner that participants can be identified, directly or through identifiers linked to the participants, and either: Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior that is not exempt under subdivision 2 of 22VAC30-40-80 if:~~

~~a. The participant's responses, if they became known outside the research, could reasonably place the participant at risk of criminal or civil liability or be damaging to the participant's financial standing, employability, or reputation. The human subjects are elected or appointed public officials or candidates for public office; or~~

~~b. The research deals with sensitive aspects of the participant's own behavior, such as sexual behavior, drug or alcohol use, illegal conduct, or family planning. Federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.~~

~~4. Research involving solely the observation (including observation by participants) of public behavior, unless observations are recorded in such a manner that participants can be identified, directly or through identifiers linked to the participants, and either:~~

~~a. The observations recorded about the individual, if they became known outside the research, could reasonably place the human participant at risk of criminal or civil liability or be damaging to the participant's financial standing, employability, or reputation; or~~

~~b. The research deals with sensitive aspects of the participant's own behavior, such as illegal conduct, drug use, sexual behavior, or use of alcohol.~~

~~5. 4. Research involving solely the collection or study of existing data, documents, records, or pathological specimens, or diagnostic specimens, if these sources are publicly available; or if the information taken from these sources is recorded by the investigator in such a manner that participants subjects cannot be identified, directly or through identifiers linked to the participants subjects.~~

5. Research and demonstration projects that are conducted by or subject to the approval of the commissioner, and that are designed to study, evaluate, or otherwise examine:

a. Public benefit or service programs;

b. Procedures for obtaining benefits or services under those programs;

c. Possible changes in or alternatives to those programs or procedures; or

d. Possible changes in methods or levels of payment for benefits or services under those programs.

6. Taste and food quality evaluation and consumer acceptance studies:

a. If wholesome foods without additives are consumed; or

b. If a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

**22VAC30-40-90. Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.**

~~A. The committee may conduct an expedited review of a human research project which involves no more than minimal risk to the participants if (i) another institution's or agency's human research review committee has reviewed and approved the project or (ii) the review involves only minor changes in previously approved research and the changes occur during the approved project period. The HRRC may use the expedited review procedure for categories of research that are listed in 63 FR 60364-60367 where either or both of the following apply:~~

1. Some or all of the research appearing on the list and found by the reviewer(s) to involve no more than minimal risk.

2. Minor changes in previously approved research during the period (of one year or less) for which approval is authorized.

~~Under an expedited review procedure, the committee review may be carried out by the HRRC chairperson and one or by one or more experienced reviewers designated by the chairperson from among members of the committee may carry out the review HRRC. In reviewing the research, the reviewers may exercise all of the authorities of the committee HRRC except that the reviewers may not disapprove the research. A research activity proposal may be disapproved only after review in accordance with the nonexpedited by a convened meeting of the HRRC in which a quorum is present and in accordance with procedure set forth in 22VAC30-40-70.~~

~~B. Each committee which uses When an expedited review procedure is used, the HRRC shall adopt a method for keeping all members advised of research proposals which have been approved under the expedited review procedure.~~

~~C. Research activities involving no more than minimal risk and in which the only involvement of human participants will be in one or more of the categories referred to in 34 CFR 97.110. The commissioner may restrict, suspend, terminate, or choose not to authorize the HRRC's use of the expedited review procedure.~~

**22VAC30-40-100. Informed consent.**

~~A. No human research may be conducted in the department, any independent living center, any sheltered workshop, or the Woodrow Wilson Rehabilitation Center or approved by the research committee in the absence of voluntary informed, written consent. If the participant is competent at the time the consent is required, then the consent must be subscribed to in writing by the participant and witnessed. If the participant is not competent at the time the consent is required, then the consent shall be subscribed to in writing by the participant's legally authorized representative and witnessed except as provided for in subsection F of this section. If the participant is a minor otherwise capable of rendering voluntary informed consent, the consent must be subscribed to in writing by both the minor and his legally authorized representative and witnessed. A research Except as provided elsewhere in this chapter, no investigator may involve a human being as a subject in research covered by this chapter unless the investigator has obtained the legally effective informed consent of the prospective subject or the prospective subject's legally authorized representative in accordance with this chapter. The investigator shall seek such consent only under circumstances that provide the prospective human participant or the representative prospective human participant's legally authorized representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the prospective human participant or the prospective~~

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human participant's legally authorized representative shall be in language understandable to the prospective human participant or the prospective human participant's legally authorized representative. No informed consent, whether oral or written, may include any exculpatory language through which the subject or the legally authorized representative is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the covered entity, or its agents from liability for negligence.

~~B. No individual shall participate in research unless this requirement is met for each individual. The giving of consent by a legally authorized representative shall be subject to the provisions of subsection C of this section. No voluntary informed consent shall include any language through which the participant waives or appears to waive any of his legal rights, including any release of any individual, institution or agency or any agents thereof from liability for negligence. Notwithstanding consent by a legally authorized representative, no person shall be forced to participate in any human research. Each human participant shall be given a copy of the signed consent form required by 22VAC30-40-40 A, except as provided for in 22VAC30-40-100 F. In seeking informed consent, the following basic elements shall be provided to each prospective subject or legally authorized representative:~~

1. A statement that the project involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures that are experimental;
2. A description of any reasonably foreseeable risks or discomforts to the subject;
3. A description of any benefits to the subject or to others that may reasonably be expected from the research;
4. A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject;
5. A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained;
6. For research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained;
7. An explanation of who to contact for answers to pertinent questions about the research and research subject's rights, and who to contact in the event of a research-related injury to the subject; and

8. A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

~~C. No legally authorized representative may consent to nontherapeutic research unless the committee determines that such nontherapeutic research will present no more than a minor increase over minimal risk to the participant. No nontherapeutic research shall be performed without the consent of the human participant. When the HIRC determines that it is appropriate, one or more of the following additional elements of informed consent shall also be provided to each subject:~~

1. A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) that are currently unforeseeable;
2. Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent;
3. Any additional costs to the subject that may result from participation in the research;
4. The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject;
5. A statement that significant new findings developed during the course of the research that may relate to the subject's willingness to continue participation will be provided to the subject; and
6. The approximate number of subjects involved in the project.

~~D. The committee HIRC may approve a consent procedure which that does not include or which alters some or all of the elements of informed consent set forth in 22VAC30-40-10. The committee may this section, or waive the requirements requirement to obtain some or all informed consent provided the committee HIRC finds and documents that:~~

1. The research involves no more than minimal risk to the human participants; or demonstration project is to be conducted by or subject to the approval of state or local government officials and is designed to study, evaluate, or otherwise examine:
  - a. Public benefit or service programs;
  - b. Procedures for obtaining benefits or services under those programs;
  - c. Possible changes in or alternatives to those programs or procedures; or

d. Possible changes in methods or levels of payment for benefits or services under those programs; and

2. The waiver or alteration will not adversely affect the rights and welfare of the human participants;

3. 2. The research could not practicably be carried out without the waiver or alteration; and

4. Whenever appropriate, the human participants will be provided with additional pertinent information after participation.

E. Except as provided in subsection F of this section, the consent form may be either of the following: The HRRC may approve a consent procedure that does not include or that alters some or all of the elements of informed consent set forth in subsection B of this section, or waive the requirements to obtain informed consent provided the HRRC finds and documents that:

1. A written consent document that embodies the elements of informed consent required by 22VAC30-40-10. This form may be read to the participant or the participant's legally authorized representative, but in any event, the investigator shall give either the participant or the representative adequate opportunity to read it before it is signed; or

2. A short form written consent document stating that the elements of informed consent required by 22VAC30-40-10 have been presented orally to the participant or the participant's legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Also, the committee shall approve a written summary of what is to be said to the participant or the representative. Only the short form itself is to be signed by the participant or the representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary shall be given to the human participant or the representative, in addition to a copy of the short form.

1. The research involves no more than minimal risk to the subject;

2. The waiver or alteration will not adversely affect the rights and welfare of the subjects;

3. The research could not practicably be carried out without the waiver or alteration; and

4. Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

F. The committee may waive the requirement for the research investigator to obtain a signed consent form for some or all participants if it finds that the only record linking the participant and the research would be the consent document and the principal risk would be potential harm resulting from

a breach of confidentiality and there is no greater than a minimal risk of physical or mental harm to the human participant. Each participant will be asked whether the participant wants documentation linking the participant with the research, and the participant's wishes will govern. In cases where the documentation requirement is waived, the committee may require the investigator to provide participants with a written statement regarding the research. The informed consent requirements in this chapter are not intended to preempt any applicable federal, state, or local laws that require additional information to be disclosed in order for informed consent to be legally effective.

G. Nothing in this chapter is intended to limit the authority of a physician to provide emergency medical care, to the extent the physician is permitted to do so under applicable federal or state law, or local ordinance.

H. Notwithstanding consent by a legally authorized representative, no person shall be forced to participate in any human subjects research. Each human subject shall be given a copy of the signed consent form required by this section, except as provided for in subsection J of this section.

I. No legally authorized representative may consent to nontherapeutic research unless the HRRC determines that such nontherapeutic research will present no more than a minor increase over minimal risk to the prospective subject. No nontherapeutic research shall be performed without the consent of the human subject.

#### J. Documentation of informed consent.

1. Except as provided in subdivision 3 of this subsection, informed consent shall be documented by the use of a written consent form approved by the HRRC and signed by the subject or the subject's legally authorized representative. A copy shall be given to the person signing the form.

2. Except as provided in subdivision 3 of this subsection, the consent form may be either of the following:

a. A written consent document that embodies the elements of informed consent required in subsection B of this section. This form may be read to the subject or the subject's legally authorized representative, but in any event, the investigator shall give either the subject or the subject's legally authorized representative adequate opportunity to read it before it is signed; or

b. A short form written consent document stating that the elements of informed consent required in subsection B of this section have been presented orally to the subject or the subject's legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Also, the HRRC shall approve a written summary of what is to be said to the subject or the representative. Only the short form itself is to be signed

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by the subject or the representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary shall be given to the subject or the legally authorized representative, in addition to a copy of the short form.

3. The HRRC may waive the requirement for the investigator to obtain a signed consent form for some or all subjects if it finds either:

a. That the only record linking the subject and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality. Each subject will be asked whether the subject wants documentation linking the subject with the research, and the subject's wishes will govern; or

b. That the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside of the research context. In cases in which the documentation requirement is waived, the HRRC may require the investigator to provide subjects with a written statement regarding the research.

## **22VAC30-40-110. Committee HRRC records.**

A. An institution, or when appropriate a committee, The HRRC shall prepare and maintain adequate documentation of committee HRRC activities, including the following:

1. Copies of all research proposals applications reviewed, scientific evaluations, if any, that accompany the proposals applications, approved sample consent documents, progress reports submitted by investigators, and reports of injuries to participants subjects;

2. Minutes of committee HRRC meetings which shall be in sufficient detail to show attendance at the meetings; actions taken by the committee HRRC; the vote on these actions including the number of members voting for, against, and abstaining; the basis for requiring changes in or disapproving research; and a written summary of the discussion of controverted issues and their resolution;

3. Records of continuing review activities;

4. Copies of all correspondence between the committee HRRC and the research investigators;

5. A list of all committee HRRC members identified by name; earned degrees; representative capacity; indications of experience such as board certifications, licenses, etc., sufficient to describe each member's chief anticipated contributions to HRRC deliberations; and any employment or other relationship between each member and the covered entity, for example: full-time employee, part-time

employee, member of governing panel or board, or paid or unpaid consultant;

6. Written procedures for the committee Statements of significant new findings provided to participants; and

7. Statements of significant new findings provided to participants. Written procedures for the HRRC that shall include:

a. Conducting its initial and continuing review of research and for reporting its findings and actions to the investigator and the department;

b. Determining which projects require review more often than annually and which projects need verification from sources other than the investigators that no material changes have occurred since previous HRRC review;

c. Ensuring prompt reporting to the HRRC of proposed changes in a research activity, and for ensuring that such changes in approved research, during the period for which HRRC approval has already been given, may not be initiated without HRRC review and approval except when necessary to eliminate apparent immediate hazards to the subject; and

d. Ensuring prompt reporting to the HRRC and the commissioner of (i) any unanticipated problems involving risks to subjects or others or any serious or continuing noncompliance with this policy or the requirements or determinations of the HRRC and (ii) any suspension or termination of HRRC approval.

B. The records required by this chapter shall be retained for at least three years, and records relating to research which is conducted shall be retained for at least three years after completion of the research. All records shall be accessible for inspection and copying by authorized employees or agents of the department or federal agency at reasonable times and in a reasonable manner.

C. The HRRC shall ensure that an overview of approved human subject research projects and the results of such projects are made public on the department's website unless otherwise exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

## **22VAC30-40-120. Mandatory reporting.**

Each research review committee The HRRC shall submit to the Governor, the General Assembly, and the commissioner or his designee at least annually a report on the human subjects research projects reviewed and approved by the committee HRRC, including any significant deviations from the proposals as approved.

**22VAC30-40-130. Role of ~~the department and the commissioner.~~**

A. The commissioner shall ~~establish and~~ maintain records of ~~institutional~~ federal assurances, annual reports, and summary descriptions of research projects.

B. The commissioner shall review communications from ~~committees~~ the HRRC reporting violations of research protocols which led to suspension or termination of the research to ensure that appropriate steps have been taken for the protection of the rights of human ~~research participants~~ subjects.

C. The commissioner shall arrange for ~~the~~ printing and dissemination of copies of these regulations.

**22VAC30-40-140. Applicability of state policies.**

Nothing in this chapter shall be construed as limiting in any way the rights of ~~participants~~ human subjects in research under regulations promulgated in response to §§ ~~32.1-162.19 and 37.1-84.1~~ Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia.

**22VAC30-40-150. Applicability of federal policies.**

~~Human research at institutions which~~ The conduct of human subjects research that is subject to policies and regulations for the protection of human ~~participants~~ subjects promulgated by any agency of the federal government shall be exempt from requirements of this chapter. Such institutions When the HRRC reviews or approves federally funded or sponsored human research proposals, the HRRC shall notify the commissioner at least annually of ~~their~~ its compliance with ~~the federal~~ policies and regulations of federal agencies for the protection of human research subjects.

**22VAC30-40-160. Additional protection for minors involved as subjects in research.**

A. Research not involving greater than minimal risk. The covered entity may conduct or fund research in which the HRRC finds that no greater than minimal risk to minors is presented, only if the HRRC finds that adequate provisions are made for soliciting the assent of the minors and the permission of their parents or guardians, pursuant to subsection E of this section.

B. Research involving greater than minimal risk but presenting the prospect of direct benefit to the individual subjects. The covered entity may conduct or fund research in which the HRRC finds that more than minimal risk to minors is presented by an intervention or procedure that holds out the prospect of direct benefit for the individual subject, or by a monitoring procedure that is likely to contribute to the subject's well-being, only if the HRRC finds that:

1. The risk is justified by the anticipated benefit to the subjects;

2. The relation of the anticipated benefit to the risk is at least as favorable to the subjects as that presented by available alternative approaches; and

3. Adequate provisions are made for soliciting the assent of the minors and permission of their parents or guardians, pursuant to subsection E of this section.

C. Research involving greater than minimal risk and no prospect of direct benefit to individual subjects, but likely to yield generalizable knowledge about the subject's disorder or condition. The covered entity may conduct or fund research in which the HRRC finds that more than minimal risk to minors is presented by an intervention or procedure that does not hold out the prospect of direct benefit for the individual subject, or by a monitoring procedure that is not likely to contribute to the well-being of the subject, only if the HRRC finds that:

1. The risk represents a minor increase over minimal risk;
2. The intervention or procedure presents experiences to subjects that are reasonably commensurate with those inherent in their actual or expected medical, dental, psychological, social, or educational situations;
3. The intervention or procedure is likely to yield generalizable knowledge about the subjects' disorder or condition that is of vital importance for the understanding or amelioration of the subjects' disorder or condition; and
4. Adequate provisions are made for soliciting assent of the minors and permission of their parents or guardians, pursuant to subsection E of this section.

D. Research not otherwise approvable that presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of minors. The covered entity may conduct or fund research that the HRRC does not believe meets the requirements pursuant to subsection A, B, or C of this section only if:

1. The HRRC finds that the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of minors; and
2. The Secretary of the United States Department of Education, after consultation with a panel of experts in pertinent disciplines (for example: science, medicine, education, ethics, law) and following opportunity for public review and comment, has determined either that:
  - a. The research in fact satisfies the conditions pursuant to subsection A, B, or C of this section, as applicable; or
  - b. (i) The research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of minors; (ii) the research will be conducted in accordance with sound ethical principles; and (iii) adequate provisions are

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made for soliciting the assent of minors and the permission of their parents or guardians, pursuant to subsection E of this section.

## E. Requirements for permission by parents or guardians and for assent by minors.

1. In addition to the determinations required under other applicable subsections of this section, the HRRC shall determine that adequate provisions are made for soliciting the assent of the minors, if in the judgment of the HRRC the minors are capable of providing assent. In determining whether minors are capable of assenting, the HRRC shall take into account the ages, maturity, and psychological state of the minors involved. This judgment may be made for all minors to be involved in research under a particular protocol, or for each minor, as the HRRC deems appropriate. If the HRRC determines that the capability of some or all of the minors is so limited that they cannot reasonably be consulted or that the intervention or procedure involved in the research holds out a prospect of direct benefit that is important to the health or well-being of the minors and is available only in the context of the research, the assent of the minors is not a necessary condition for proceeding with the research. Even if the HRRC determines that the subjects are capable of assenting, the HRRC may still waive the assent requirement under circumstances in which consent may be waived in accord with 22VAC30-40-100.

2. In addition to the determinations required under other applicable subsections of this section, the HRRC shall determine, in accordance with and to the extent that consent is required by 22VAC30-40-100, that adequate provisions are made for soliciting the permission of each minor's parent(s) or guardian(s). If parental permission is to be obtained, the HRRC may find that the permission of one parent is sufficient for research to be conducted pursuant to subsection A or B of this section. If research is covered pursuant to subsections C and D of this section and permission is to be obtained from parents, both parents must give their permission unless one parent is deceased, unknown, incompetent, or not reasonably available, or if only one parent has legal responsibility for the care and custody of the minor. Only the legal custodial parent can give informed consent.

3. In addition to the provisions for waiver contained in 22VAC30-40-100, if the HRRC determines that a research protocol is designed for conditions or for a subject population for which parental or guardian permission is not a reasonable requirement to protect the subjects (for example, neglected or abused minors), it may waive the consent requirements in 22VAC30-40-100 and subdivision 2 of this subsection, provided an appropriate mechanism for protecting the minors who will participate as subjects in the research is substituted, and provided further that the

waiver is not inconsistent with federal, state, or local law. The choice of an appropriate mechanism depends upon the nature and purpose of the activities described in the protocol, the risk and anticipated benefit to the research subjects, and their age, maturity, status, and condition.

4. Permission by parents or guardians must be documented in accordance with and to the extent required by 22VAC30-40-100 J.

5. If the HRRC determines that assent is required, it shall also determine whether and how assent must be documented.

## F. Wards.

1. Minors who are wards of the state or any other agency, institution, or entity may be included in research approved under subsection C or D of this section only if that research is:

a. Related to their status as wards; or

b. Conducted in schools, camps, hospitals, institutions, or similar settings in which the majority of minors involved as subjects are not wards.

2. If research is approved under subdivision 1 of this subsection, the HRRC shall require appointment of an advocate for each minor who is a ward, in addition to any other individual acting on behalf of the minor as guardian or in loco parentis. One individual may serve as advocate for more than one minor. The advocate must be an individual who has the background and experience to act in, and agrees to act in, the best interest of the minor for the duration of the minor's participation in the research and who is not associated in any way (except in the role as advocate or member of the HRRC) with the research, the investigator or investigators, or the guardian organization.

VA.R. Doc. No. R07-294; Filed October 7, 2008, 3:30 p.m.

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## TITLE 23. TAXATION

### DEPARTMENT OF TAXATION

#### Fast-Track Regulation

Titles of Regulations: 23VAC10-10. Guidelines for Public Participation in Regulation Development and Promulgation (repealing 23VAC10-10-10 through 23VAC10-10-80).

23VAC10-11. Public Participation Guidelines (adding 23VAC10-11-10 through 23VAC10-11-110).

Statutory Authority: §§ 2.2-4007.02 and 58.1-203 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until December 12, 2008.

Effective Date: December 28, 2008.

Agency Contact: Jennifer Lewis, Tax Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2341, FAX (804) 371-2355, or email [jennifer.lewis@tax.virginia.gov](mailto:jennifer.lewis@tax.virginia.gov).

Basis: Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is mandatory under Chapter 321 of the 2008 Acts of Assembly.

Purpose: The purpose of this regulatory action is to repeal the current public participation guidelines and promulgate model public participation guidelines. The only change from the model public participation guidelines that TAX has made is to increase the public comment period for re-proposed and fast-track regulations from 30 days to 60 days. This change is necessary to conform with § 58.1-203 of the Code of Virginia, which provides that "...notice of a proposed regulation shall appear at least sixty days in advance of the date prescribed for submittals."

Rationale for Using Fast-Track Process: As the proposed text does not make any changes to the model public participation guidelines, other than to conform to the mandate of § 58.1-203 of the Code of Virginia, this action is not expected to be controversial.

Substance: This regulatory action repeals the current public participation guidelines and promulgates model public participation guidelines. The only change from the model public participation guidelines that TAX has made is to increase the public comment period for re-proposed and fast-track regulations from 30 days to 60 days. This change is necessary to conform with § 58.1-203 of the Code of Virginia, which provides that "...notice of a proposed regulation shall appear at least sixty days in advance of the date prescribed for submittals."

Section 58.1-203 of the Code of Virginia states that "in promulgating regulations, the Tax Commissioner shall follow the applicable provisions of the Administrative Process Act (§ 2.2-4000 et seq.), except that notice of a proposed regulation shall appear at least sixty days in advance of the date prescribed for submittals."

Issues: The regulatory action poses no disadvantages to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Department of Taxation proposes to adopt the model public participation guidelines developed by the Department of Planning and Budget in consultation with the Office of the Attorney General (as required by Chapter 321 of the 2008 Acts of Assembly), with one amendment; Tax proposes to lengthen the public comment period for re-proposed and fast-track regulations from 30 to 60 days.

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. Pursuant to Chapter 321 of the 2008 Acts of Assembly, the Department of Planning and Budget, in consultation with the Office of the Attorney General, (i) developed model public participation guidelines (PPGs) and (ii) provided these model PPGs to each agency that has the authority to promulgate regulations. Chapter 321 requires that by December 1, 2008, each agency shall either (a) adopt the model public participation guidelines as an exempt action or (b) if significant additions or changes are proposed, promulgate the model public participation guidelines with the proposed changes as fast-track regulations pursuant to Code of Virginia § 2.2-4012.1.

The purpose of the model PPG legislation is threefold: first, to ensure that each agency or board has a current set of PPGs in place.<sup>1</sup> Second, to ensure that each agency or board's PPGs incorporate the use of technology such as the Virginia Regulatory Town Hall, email to the extent possible, and the use of electronic mailing lists. Last, but perhaps most importantly, to have uniform guidelines in place to facilitate citizen participation in rulemaking and to make those guidelines consistent, to the extent possible, among all executive branch boards and agencies.

The Department of Taxation is proposing only one change to the model PPGs, to increase the public comment period for re-proposed and fast-track regulations from 30 to 60 days. Increasing the public comment period from 30 to 60 days produces both potential benefits and costs. Additional time may allow additional individuals and entities to provide input who hear about proposed changes indirectly and not at the start of comment periods. On the other hand, increasing the public comment period will slow down the regulatory process and may delay the implementation of beneficial changes. As described above, promulgating the otherwise model PPGs will be beneficial in that the Tax PPGs will: 1) reflect current information, 2) incorporate the use of technology such as the Virginia Regulatory Town Hall, email to the extent possible, and the use of electronic mailing lists, and 3) be largely consistent with other agency PPGs which will facilitate citizen participation in rulemaking.

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**Businesses and Entities Affected.** Since essentially all citizens and entities in the Commonwealth are either affected or potentially affected by tax law, the proposed amendments to the Department of Taxation PPGs potentially affect all citizens and entities in the Commonwealth.

**Localities Particularly Affected.** The proposed amendments do not disproportionately affect particular localities.

**Projected Impact on Employment.** The proposal amendments do not directly affect employment.

**Effects on the Use and Value of Private Property.** The proposal amendments do not directly affect the use and value of private property.

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

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

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

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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<sup>1</sup> Some agencies and boards have not updated their PPGs since the mid-late 1980's.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency generally agrees with the Department of Planning and Budget's

Economic Impact Analysis. However, it notes that while the 60-day comment period TAX has chosen for repropoed and fast-track regulations is longer than that suggested in the Model Public Participation Guidelines, it is consistent with § 58.1-203 B of the Code of Virginia, which provides that "in promulgating regulations, the Tax Commissioner shall follow the applicable provisions of the Administrative Process Act (§ 2.2-4000 et seq.), except that notice of a proposed regulation shall appear at least sixty days in advance of the date prescribed for submittals."

## 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.*

*The only change from the model public participation guidelines that the Department of Taxation has made is to increase the public comment period for repropoed and fast-track regulations from 30 days to 60 days. This change is necessary to conform with § 58.1-203 of the Code of Virginia, which provides that "...notice of a proposed regulation shall appear at least sixty days in advance of the date prescribed for submittals."*

## CHAPTER 11 PUBLIC PARTICIPATION GUIDELINES

### Part I Purpose and Definitions

#### 23VAC10-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Department of Taxation. 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).

## **23VAC10-11-20. 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 Taxation, 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](http://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

#### **23VAC10-11-30. 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.

#### **23VAC10-11-40. 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 23VAC10-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).

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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

### **23VAC10-11-50. 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 60 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 60 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.

### **23VAC10-11-60. 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.

### **23VAC10-11-70. 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.

**23VAC10-11-80. 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.

**23VAC10-11-90. 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.

**23VAC10-11-100. 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.

**23VAC10-11-110. 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. R09-1507; Filed September 25, 2008, 9:42 a.m.

**Final Regulation**

**REGISTRAR'S NOTICE:** The Department of Taxation is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Department of Taxation will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **23VAC10-210. Retail Sales and Use Tax (adding 23VAC10-210-595; repealing 23VAC10-210-170, 23VAC10-210-870, 23VAC10-210-4010).**

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

**Effective Date:** November 26, 2008.

**Agency Contact:** Bland Sutton, Analyst, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2332, FAX (804) 371-2355, or email bland.sutton@tax.virginia.gov.

**Summary:**

*Currently, there are three separate, nearly identical, regulation sections addressing banks, loan and finance companies, and savings and loan associations. This regulatory activity will repeal the three existing regulation sections and combine them into a new section, 23VAC10-210-595, Financial institutions. This change will not impact or change the current policy of the Department of Taxation with respect to financial institutions.*

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## **23VAC10-210-170. Banks. (Repealed.)**

The tax applies to purchases of tangible personal property by all national and state banks for their use and consumption.

When any bank engages in selling, leasing or renting tangible personal property to consumers, it must register as a dealer and collect and pay the tax to the Department of Taxation.

Taxable sales by banks include, but are not limited to, sales of checks and checkbooks; silverware; savings or piggy banks; repossessed merchandise; gold and silver coins or bars for investment purposes; and charges for the lease or rental of tangible personal property.

The rental of safe deposit boxes is not subject to the tax. For trustees, see 23VAC10-210-6010.

## **23VAC10-210-595. Financial institutions.**

A. Purchases. The tax applies to purchases of tangible personal property by all national, state and local banks, savings and loan associations, and loan and finance companies.

B. Sales. When any bank, savings and loan association, or loan and finance company engages in selling, leasing or renting tangible personal property to consumers or users, it must register as a dealer and collect and pay the tax to the Department of Taxation. The tax applies to all sales even if the property has been repossessed or obtained by default of the borrower.

The rental of safe deposit boxes does not qualify as the rental of tangible personal property and is not subject to the tax. For trustees, see 23VAC10-210-6010.

## **23VAC10-210-870. Loan and finance companies. (Repealed.)**

The tax applies to purchases of tangible personal property by all loan and finance companies and like associations for their use or consumption. When the association engages in selling, leasing or renting tangible personal property to consumers or users, it must register as a dealer and collect and pay the tax due even if the property has been repossessed or obtained by default of borrowers.

## **23VAC10-210-4010. Savings and loan associations. (Repealed.)**

The tax applies to purchases of tangible personal property by all savings and loan and building and loan associations for their use or consumption. When such an association engages in selling, leasing or renting tangible personal property to consumers or users, it must register as a dealer and collect and pay the tax due to the Department of Taxation.

VA.R. Doc. No. R09-1640; Filed October 6, 2008, 3:50 p.m.

# TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

## DEPARTMENT OF MOTOR VEHICLES

### Proposed Regulation

Title of Regulation: 24VAC20-81. Hauling Permit Regulation (adding 24VAC20-81-10 through 24VAC20-81-250).

Statutory Authority: § 46.2-203 and Article 18 (§ 46.2-1139 et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia.

#### Public Hearing Information:

November 4, 2008 - 1 p.m. - Virginia Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA

November 21, 2008 - 1 p.m. - Mary D. Pretlow Library, 111 West Ocean View Avenue, Norfolk, VA

Public Comments: Public comments may be submitted until December 27, 2008.

Agency Contact: Ron Thompson, Senior Policy Analyst, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-1844, FAX (804) 367-6631, TTY (800) 435-5137, or email [ronald.thompson@dmv.virginia.gov](mailto:ronald.thompson@dmv.virginia.gov).

Basis: Under § 46.2-203 and Article 18 (§ 46.2-1139 et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia, the Commissioner of the Department of Motor Vehicles may adopt reasonable administrative regulations necessary to carry out the laws administered by the department and may enforce these regulations and laws through the agencies of the Commonwealth he may designate.

Purpose: The Code of Virginia sets forth limitations of weight, width, height, and length for objects and vehicles that may be moved over the highways of the Commonwealth. Pursuant to Article 18 (§ 46.2-1139 et. seq.) of Chapter 10 of Title 46.2 of the Code of Virginia, oversize or overweight permits may be issued for vehicles with loads that exceed these maximum statutory limits. As a result of legislation enacted in the 2003 session of the Virginia General Assembly, responsibility for the issuance of these permits was transferred from the Virginia Department of Transportation (VDOT) to the Virginia Department of Motor Vehicles (DMV) on July 1, 2003. The Hauling Permit Section, which reviews applications and issues these permits to haul over dimensional loads and configurations, was transferred from VDOT to DMV on that date.

The Hauling Permit Manual, which governs the issuance of oversize and overweight permits by the Hauling Permit Section based on state law, is currently contained as a regulation in the Virginia Administrative Code under VDOT (24VAC30-111). The manual is being revised to reflect the transfer of the permit issuance function and the organizational

unit to DMV. This document is also being modified to clarify requirements relating to safety and enforcement in the hauling of these large loads, to enhance the ability of the Commonwealth to work cooperatively with other states in key areas such as escort vehicle requirements, and to reflect new technologies now available to assist customers. The revised manual will be a new regulation, and DMV will work cooperatively with VDOT to request the repeal of the existing 24VAC30-111.

Substance: In order to reflect the transfer of the responsibility for the issuance of oversize and overweight permits from VDOT to DMV, references to the "Commonwealth Transportation Board" and the "Department of Transportation" will be changed to the "commissioner" or the "Department of Motor Vehicles" as appropriate. In addition, key contact information in the manual such as telephone numbers and mailing addresses are being updated to reflect the relocation of the Hauling Permit Section to DMV.

In addition to incorporating this organizational change, the revision of the Hauling Permit Manual will address other relevant program areas. The safety of Virginia's citizens and highways is a key component in the movement of large objects and vehicles. The manual is being modified to clarify the requirements that must be met by applicants for a hauling permit. These requirements are discussed in depth under the "detail of changes" section.

Issues: This regulatory action poses no disadvantages to the public or the Commonwealth of Virginia. It will protect the citizens of Virginia by ensuring that over dimensional loads and configurations are transported safely over the highways and roads of our state.

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

Summary of the Proposed Amendments to Regulation. The proposed regulations will 1) establish the regulatory authority of the Department of Motor Vehicles in issuing hauling permits by proposing much of the same hauling permit regulations that currently exists under the authority of the Virginia Department of Transportation, 2) establish Escort Driver Certification fees, 3) increase hauling permit fees, 4) no longer require that a hauling permit be assumed invalid if a permit condition is violated, 5) allow reciprocity of escort services by other jurisdictions, and 6) require Virginia Department of Transportation to conduct an engineering analysis for Superload Blanket Permits.

Result of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs.

Estimated Economic Impact. The movement of oversize or overweight loads on the highways of the Commonwealth is subject to these regulations. Prior to 2003, Hauling Permit Regulation (24VAC30-111) was administered by the Virginia Department of Transportation (VDOT). The 2003 session of

the Virginia General Assembly has transferred the hauling permit authority and the administrative resources from VDOT to Department of Motor Vehicles (DMV). Since then DMV has been issuing permits according to the standards and procedures established in the VDOT regulations.

With this action, DMV proposes to establish the Hauling Permit Regulation in its own administrative code. The majority of the proposed requirements are the same as the requirements contained in 24VAC30-111, but are revised to reflect the transfer of the permit section from VDOT to DMV and to improve the clarity of some of the requirements.<sup>1</sup> Because most of the requirements are the same, there will be no significant change in practice. Thus, no significant economic effect is expected from the proposed requirements that are the same as those contained in the VDOT regulations.

The proposed regulations also introduce new requirements that are not contained in VDOT regulations. One of the significant changes is the establishment of Escort Driver Certification fees. Currently, escort driver certifications are offered by the Virginia Commonwealth University (VCU) in exchange for approximately \$30,000 from DMV per year. According to DMV, VCU no longer wishes to offer these certifications. In order to meet the need, DMV plans to start its own certification program. It is estimated that approximately 3,000 certificates per year will be issued generating approximately \$75,000 in certification fees.

Also, the proposed changes will increase the hauling permit fees. Approximately 35,000 to 40,000 hauling permits are issued every year. Based on the analysis of 2005 revenues, the proposed fee increases are estimated to generate an additional \$1 million annually, an increase from \$2.3 million to \$3.3 million. DMV plans to use the additional revenues to purchase new scales, information technology system upgrades, personnel, and maintenance of new scales, systems and equipment. Maintaining operational stock of scales and improved information technology system are expected to provide DMV with necessary tools in order to minimize potential harm or damage to highways through enforcement of these regulations.

Another proposed change will no longer require that the permit be completely invalid if permit conditions are violated. Currently, if a law enforcement officer finds a violation of a permit condition, the fine is issued based on the assumption that there was no hauling permit issued at all. This situation is reported to result in excessive (tens of thousands of dollars) fines issued to operators most of which are later reduced significantly by judges in courts. With this change, law enforcement officers will have the ability to issue the fines that are proportionate with the seriousness of violation instead of issuing exorbitant fines as if no hauling permit existed. This change is expected to reduce administrative and legal costs associated with disputes over excessive fines.

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Also, the proposed regulations will allow reciprocity of escort services by other states. Currently, as the loads enter or exit the Commonwealth they may have to change their escort services in order to meet differing requirements among different states. With the proposed changes, an escort service in the Commonwealth may be recognized by other states and escort services in other states may be recognized by the Commonwealth. This proposed change is expected to reduce compliance costs by providing additional flexibility to hauling operators.

Finally, the proposed regulations will require VDOT to conduct an engineering analysis for Superload Blanket Permits (for loads over 150,000 pounds gross weight). Since 2003, when DMV started administering the hauling permit regulations, no engineering analysis has been conducted on these loads. The proposed engineering analysis will help ensure that the structures on highways are not harmed or damaged.

**Businesses and Entities Affected.** The proposed regulations primarily affect hauling permit holders and escort service providers. According to DMV, approximately 35,000 to 40,000 permits and approximately 3,000 escort certifications are issued every year. In addition, the proposed regulations may have some effect on VDOT, VCU, and law enforcement officers.

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

**Projected Impact on Employment.** The proposed regulations may increase demand for labor as a result of planned escort driver certification program at DMV and install and maintenance of new scales and new information technology system. On the other hand, increased compliance costs due to new escort driver certification and higher permit fees may reduce the demand for hauling services. The net impact on labor demand is not known.

**Effects on the Use and Value of Private Property.** No significant effect on real property is expected. However, increased compliance costs due to new escort driver certification and higher permit fees may reduce the revenues of hauling services and their asset values. On the other hand to the extent hauling operators avoid excessive fines due to the proposed changes, their asset values may be enhanced.

**Small Businesses: Costs and Other Effects.** Most of the hauling operators and escort service businesses are believed to be small businesses. As discussed, the proposed regulations are likely to increase compliance costs primarily due to new escort driver certification and higher permit fees.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The main reason for the proposed new escort driver certification fees and increased hauling permit fees is to generate revenues to support the administration and enforcement of the proposed regulations. An alternative

method that minimizes the adverse impact on the affected small business would be finding a different source of funding.

**Real Estate Development Costs.** No significant effect 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.

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<sup>1</sup> DMV plans to coordinate the repeal of VDOT regulations when these regulations are in effect.

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

Summary:

*The Department of Motor Vehicles is responsible for the issuance of oversize and overweight permits for the movement of objects and vehicles that exceed the statutory limits set forth in the Code of Virginia. The proposed regulation is a new regulation that will contain the Hauling Permit Manual. This manual establishes the requirements for the issuance of hauling permits and the movement of these objects and vehicles over the highways of the Commonwealth of Virginia.*

CHAPTER 81  
HAULING PERMIT REGULATION

Part I  
General Provisions

**24VAC20-81-10. Definitions.**

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

"Automobile and watercraft transporters" means a tractor truck, lowboy, vehicle, or combination, including vehicles or combinations that transport motor vehicles or watercraft on their power unit, designed and used exclusively for the transportation of motor vehicles or watercraft.

"Commissioner" means the Commissioner of the Virginia Department of Motor Vehicles.

"DMV" means the Virginia Department of Motor Vehicles.

"Escort Vehicle Driver Certification" means a document issued by a state that signifies that the holder of the certification has successfully completed the issuing state's requirements to escort overdimensional vehicle configurations.

"Nondivisible load" means a vehicle configuration exceeding applicable size or weight limits which, if separated into smaller loads, would:

1. Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;
2. Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or
3. Require more than eight man work hours to dismantle using appropriate equipment.

The applicant for a nondivisible load permit has the burden of proof as to the number of man work hours required to dismantle the load.

"Off-centered load" means a transport vehicle's cargo is loaded so that there is no overhang on the driver's side of the transport vehicle and overhang on the passenger side.

"Semitrailer" means a vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rest on or is carried by another vehicle.

"Solid waste" means any garbage, refuse, sludge and other discarded material, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, or community activities but does not include (i) solid or dissolved material in domestic sewage, (ii) solid or dissolved material in irrigation return flows or in industrial discharges that are sources subject to a permit from the State Water

Control Board, or (iii) source, special nuclear, or byproduct material as defined by the Federal Atomic Energy Act of 1954.

"Stinger-steered automobile and watercraft transporter" means an automobile or watercraft transporter configured as a semitrailer combination wherein the fifth wheel is located on a drop frame behind and below the rearmost axle of the power unit.

"Tandem axle" means more than 40 inches but not more than 96 inches between axle centers of two consecutive axles.

"Tractor truck" means a motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the load and weight of the vehicle attached thereto.

"Trailer" means a vehicle without motive power designed for carrying property or passengers wholly on its own structure and for being drawn by a motor vehicle, including manufactured housing.

"Truck" means a motor vehicle designed to transport property on its own structure independent of any other vehicle and having a registered gross weight in excess of 7,500 pounds.

"VDOT" means the Virginia Department of Transportation.

"Vehicle configuration" means the height, weight, width and length of a vehicle to include vehicle axle spacing.

**24VAC20-81-20. General.**

A. The Code of Virginia sets forth limitations of weight, width, height and length of objects and vehicles that may be moved upon state highways and also empowers the Commissioner of the Department of Motor Vehicles to issue oversize or overweight permits for vehicles traveling over Virginia's highways with loads that, when reduced to their smallest dimensions, exceed maximum legal weight or size limits.

B. The intent of establishing statutory limitations is to protect the traveling public from hazard and unnecessary inconvenience, and to preserve the capacity and structural integrity of highways and bridges. Also, it is assumed that the state legislature did not intend for the Virginia Department of Motor Vehicles to allow, by permit, the movement of any and all vehicles or loads over the highways where such movements would exceed statutory limitations (especially where other forms of transportation are available or when loads can be reasonably reduced to meet statutory limits).

C. Permits issued by the Virginia Department of Motor Vehicles have jurisdiction only on those roads maintained by the Virginia Department of Transportation or where an agreement exists between the Virginia Department of Motor Vehicles and a jurisdiction that bears the responsibility of maintaining their own roads. However, the Virginia

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Department of Motor Vehicle's hauling permit is valid for travel over city streets provided that the streets are listed within the permit. Applicants must secure approval from local authorities prior to making movements over roads under local jurisdictions that are not listed on the Virginia Department of Motor Vehicle's hauling permit.

D. The policy of the Virginia Department of Motor Vehicles is to give primary consideration to the safety, comfort, convenience of the traveling public and to the economic interest of the Commonwealth while preserving the integrity of the state's highway system.

## **24VAC20-81-30. Authority; permits.**

A. The Commissioner of the Department of Motor Vehicles or his designee shall issue hauling permits for qualifying vehicles when: an overwidth situation is not created by loading multiple items side-by-side; an overheight situation is not created by stacking multiple items on top of one another; an overlength situation is not created by loading multiple items behind one another; an overweight situation is not created by carrying multiple items; or when statutorily exempted by the Code of Virginia.

B. All applications for hauling permits shall be made to the Department of Motor Vehicles or its designee by:

1. Accessing the hauling permit website online at [www.dmvnow.com](http://www.dmvnow.com);
2. Calling the hauling permit ordering line at (804) 786-2787;
3. Applying through a permit service chosen by the applicant;
4. Applying in person at the DMV Headquarters Office at 2300 W. Broad St., Richmond;
5. Faxing application to the Hauling Permit Section at (804) 367-0063; or
6. Mailing application to: DMV, Hauling Permit Section, P.O. Box 23602, Richmond, VA 2326.

C. Permits may be denied, revoked or declared invalid as stated in 24VAC20-81-230.

## Part II

### Legal Weight and Size Limits for Virginia

## **24VAC20-81-40. Interstate system and designated highways.**

If the vehicle configuration has been reduced to the smallest dimensions possible and still exceeds any of the following statutory limitations listed below, the applicant may be eligible for a hauling permit.

Single Axle Weight: 20,000 pounds or 650 pounds per inch (width) of tire in contact with the surface of the highway

Tandem Axle Weight: 34,000 pounds

Gross Weight: See 24VAC20-81-60. Legal weight allowed based on axle spacing

Width: 8 feet 6 inches (excluding mirrors and safety devices)

Height: 13 feet 6 inches

Length: Semitrailer - 48 feet

Semitrailer - 53 feet, provided that the semitrailer has a distance of not more than 41 feet between the kingpin of the semitrailer and the rearmost axle or a point midway between the rear tandem axles.

Tractor truck semitrailer combinations with 48 or 53 foot semitrailers - no overall length restrictions.

Twin trailers - 28 1/2 feet each

Single unit vehicle - 40 feet excluding load

Tractor trucks shall not have more than one semitrailer attached.

Trucks shall not have more than one trailer attached.

Three motor vehicles shall be drawn only if coupled together by a saddle mount device.

## **24VAC20-81-50. Primary and secondary systems.**

If the vehicle configuration has been reduced to the smallest dimensions possible and still exceeds any of the following statutory limitations listed below, the applicant may be eligible for a hauling permit.

Single Axle Weight: 20,000 pounds or 650 pounds per inch (width) of tire in contact with the surface of the highway.

Tandem Axle Weight: 34,000 pounds.

Gross Weight: See 24VAC20-81-60. Legal weight allowed based on axle spacing.

Width: 8 feet 6 inches excluding mirrors. Safety devices shall not exceed 3 inches on each side.

Height: 13 feet 6 inches.

Length: Single unit - 40 feet excluding load.  
Tractor semitrailer combination - 65 feet including load  
Combination of a towing vehicle and any manufactured housing - 65

feet including load and coupling.  
Semitrailer - 53 feet, provided that the semitrailer has a distance of not more than 41 feet between the kingpin of the semitrailer and the rearmost axle or a point midway between the rear tandem axles. May be prohibited on certain highways where posted.

**24VAC20-81-60. Legal weight allowed based on axle spacing.**

Legal weight in pounds for any group of two or more consecutive axles. A hauling permit is required when a vehicle configuration exceeds the weight limitations according to axle spacing. "L" is defined as the distance in feet between the extremes of any group of two or more consecutive axles.

<u>L</u>	<u>2 axles</u>	<u>3 axles</u>	<u>4 axles</u>	<u>5 axles</u>	<u>6 axles</u>	<u>7 or more axles</u>
<u>4</u>	<u>34,000</u>					
<u>5</u>	<u>34,000</u>					
<u>6</u>	<u>34,000</u>					
<u>7</u>	<u>34,000</u>					
<u>8</u>	<u>34,000</u>	<u>34,000</u>				
<u>9</u>	<u>39,000</u>	<u>42,500</u>				
<u>10</u>	<u>40,000</u>	<u>43,500</u>				
<u>11</u>		<u>44,000</u>				
<u>12</u>		<u>45,000</u>	<u>50,000</u>			
<u>13</u>		<u>45,000</u>	<u>50,500</u>			
<u>14</u>		<u>46,500</u>	<u>51,500</u>			
<u>15</u>		<u>47,000</u>	<u>52,000</u>			
<u>16</u>		<u>48,000</u>	<u>52,500</u>	<u>58,000</u>		
<u>17</u>		<u>48,500</u>	<u>53,500</u>	<u>58,500</u>		
<u>18</u>		<u>49,500</u>	<u>54,000</u>	<u>59,000</u>		
<u>19</u>		<u>50,000</u>	<u>54,500</u>	<u>60,000</u>		
<u>20</u>		<u>51,000</u>	<u>55,500</u>	<u>60,500</u>	<u>66,000</u>	
<u>21</u>		<u>51,500</u>	<u>56,000</u>	<u>61,000</u>	<u>66,500</u>	
<u>22</u>		<u>52,500</u>	<u>56,500</u>	<u>61,500</u>	<u>67,000</u>	
<u>23</u>		<u>53,000</u>	<u>57,500</u>	<u>62,500</u>	<u>68,000</u>	
<u>24</u>		<u>54,000</u>	<u>58,000</u>	<u>63,000</u>	<u>68,500</u>	<u>74,000</u>

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<u>25</u>		<u>54,500</u>	<u>58,500</u>	<u>63,500</u>	<u>69,000</u>	<u>74,500</u>
<u>26</u>		<u>55,500</u>	<u>59,500</u>	<u>64,000</u>	<u>69,500</u>	<u>75,000</u>
<u>27</u>		<u>56,000</u>	<u>60,000</u>	<u>65,000</u>	<u>70,000</u>	<u>75,500</u>
<u>28</u>		<u>57,000</u>	<u>60,500</u>	<u>65,500</u>	<u>71,000</u>	<u>76,500</u>
<u>29</u>		<u>57,500</u>	<u>61,500</u>	<u>66,000</u>	<u>71,500</u>	<u>77,000</u>
<u>30</u>		<u>58,500</u>	<u>62,000</u>	<u>66,500</u>	<u>72,000</u>	<u>77,500</u>
<u>31</u>		<u>59,000</u>	<u>62,500</u>	<u>67,500</u>	<u>72,500</u>	<u>78,000</u>
<u>32</u>		<u>60,000</u>	<u>63,500</u>	<u>68,000</u>	<u>73,000</u>	<u>78,500</u>
<u>33</u>			<u>64,000</u>	<u>68,500</u>	<u>74,000</u>	<u>79,000</u>
<u>34</u>			<u>64,500</u>	<u>69,000</u>	<u>74,500</u>	<u>80,000</u>
<u>35</u>			<u>65,500</u>	<u>70,000</u>	<u>75,000</u>	
<u>36</u>			<u>66,000</u>	<u>70,500</u>	<u>75,500</u>	
<u>37</u>			<u>66,500</u>	<u>71,000</u>	<u>76,000</u>	
<u>38</u>			<u>67,500</u>	<u>72,000</u>	<u>77,000</u>	
<u>39</u>			<u>68,000</u>	<u>72,500</u>	<u>77,500</u>	
<u>40</u>			<u>68,500</u>	<u>73,000</u>	<u>78,000</u>	
<u>41</u>			<u>69,500</u>	<u>73,500</u>	<u>78,500</u>	
<u>42</u>			<u>70,000</u>	<u>74,000</u>	<u>79,000</u>	
<u>43</u>			<u>70,500</u>	<u>75,000</u>	<u>80,000</u>	
<u>44</u>			<u>71,500</u>	<u>75,500</u>		
<u>45</u>			<u>72,000</u>	<u>76,000</u>		
<u>46</u>			<u>72,500</u>	<u>76,500</u>		
<u>47</u>			<u>73,500</u>	<u>77,500</u>		
<u>48</u>			<u>74,000</u>	<u>78,000</u>		
<u>49</u>			<u>74,500</u>	<u>78,500</u>		
<u>50</u>			<u>75,500</u>	<u>79,000</u>		
<u>51</u>			<u>76,000</u>	<u>80,000</u>		

**24VAC20-81-70. Maximum single axle and tandem axle weight allowed without an engineering review.**

Maximum weight in pounds according to vehicle axle spacings allowed by permit without an engineering review from the Virginia Department of Transportation's Structures and Bridges Division for any single axle or tandem axle group.

Single Axle Weight: 24,000 pounds (or 850 pounds per inch, width of tire measured in contact with the surface of the road).

Tandem Axle Weight: 44,000 pounds.

**24VAC20-81-80. Maximum weight allowed by permit without an engineering review based on axle spacing.**

Maximum weight in pounds according to vehicle axle spacings allowed by permit without an engineering review from the Virginia Department of Transportation's Structures and Bridges Division for any group of two or more consecutive axles.

All vehicle configurations shall be reduced to the smallest dimensions possible and those exceeding the specifications identified in this chart will require an engineering review before a permit can be issued.

"L" is defined as the distance in feet between extremes of any group of two or more consecutive axles.

<u>L</u>	<u>2 axles</u>	<u>3 axles</u>	<u>4 axles</u>	<u>5 axles</u>	<u>6 axles</u>	<u>7 or more axles</u>
4	44,000					
5	44,000					
6	44,000					
7	44,000					
8	48,000	53,500				
9		54,500				
10		55,000				
11		56,000				
12		56,500	63,000			
13		57,500	63,500			
14		58,000	64,500			
15		59,000	65,000			
16		59,500	65,500	72,500		
17		60,500	66,500	73,000		
18		61,000	67,000	74,000		
19		62,000	67,500	74,500		
20		62,500	68,500	75,000	82,000	
21		63,500	69,000	75,500	82,500	
22		64,000	69,500	76,500	83,000	
23		65,000	70,500	77,000	84,000	
24		65,500	71,000	77,500	84,500	91,500
25		66,500	71,500	78,000	85,000	92,000
26		67,000	72,500	79,000	85,500	92,500
27		68,000	73,000	79,500	86,000	93,000
28		68,500	73,500	80,000	87,000	94,000
29		69,500	74,500	80,500	87,500	94,500
30		70,000	75,000	81,500	88,000	95,000
31		71,000	75,500	82,000	88,500	95,500
32		71,500	76,500	82,500	89,000	96,000
33			77,000	83,000	90,000	97,000
34			77,500	84,000	90,500	97,500
35			78,500	84,500	91,000	98,000

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<u>36</u>			<u>79,000</u>	<u>85,000</u>	<u>91,500</u>	<u>98,500</u>
<u>37</u>			<u>79,500</u>	<u>85,500</u>	<u>92,000</u>	<u>99,000</u>
<u>38</u>			<u>80,500</u>	<u>86,500</u>	<u>93,000</u>	<u>99,500</u>
<u>39</u>			<u>81,000</u>	<u>87,000</u>	<u>93,500</u>	<u>100,500</u>
<u>40</u>			<u>81,500</u>	<u>87,500</u>	<u>94,000</u>	<u>101,000</u>
<u>41</u>			<u>82,500</u>	<u>88,000</u>	<u>94,500</u>	<u>101,500</u>
<u>42</u>			<u>83,000</u>	<u>89,000</u>	<u>95,000</u>	<u>102,000</u>
<u>43</u>			<u>83,500</u>	<u>89,500</u>	<u>96,000</u>	<u>102,500</u>
<u>44</u>			<u>84,500</u>	<u>90,000</u>	<u>96,500</u>	<u>103,000</u>
<u>45</u>			<u>85,000</u>	<u>90,500</u>	<u>97,000</u>	<u>104,000</u>
<u>46</u>			<u>85,500</u>	<u>91,500</u>	<u>97,500</u>	<u>104,500</u>
<u>47</u>			<u>86,500</u>	<u>92,000</u>	<u>98,000</u>	<u>105,000</u>
<u>48</u>			<u>87,000</u>	<u>92,500</u>	<u>99,000</u>	<u>105,500</u>
<u>49</u>			<u>87,500</u>	<u>93,000</u>	<u>99,500</u>	<u>106,000</u>
<u>50</u>			<u>88,500</u>	<u>94,000</u>	<u>100,000</u>	<u>106,500</u>
<u>51</u>			<u>89,000</u>	<u>94,500</u>	<u>100,500</u>	<u>107,500</u>
<u>52</u>			<u>89,500</u>	<u>95,000</u>	<u>101,000</u>	<u>108,000</u>
<u>53</u>			<u>90,500</u>	<u>95,500</u>	<u>102,000</u>	<u>108,500</u>
<u>54</u>			<u>91,000</u>	<u>96,500</u>	<u>102,500</u>	<u>109,500</u>
<u>55</u>			<u>91,500</u>	<u>97,000</u>	<u>103,000</u>	<u>109,500</u>
<u>56</u>			<u>92,500</u>	<u>97,500</u>	<u>104,000</u>	<u>110,000</u>
<u>57</u>			<u>93,000</u>	<u>98,000</u>	<u>104,500</u>	<u>111,000</u>
<u>58</u>			<u>94,000</u>	<u>99,000</u>	<u>105,000</u>	<u>111,500</u>
<u>59</u>			<u>94,500</u>	<u>99,500</u>	<u>105,500</u>	<u>112,000</u>
<u>60</u>			<u>95,000</u>	<u>100,000</u>	<u>106,000</u>	<u>112,500</u>
<u>61</u>			<u>96,000</u>	<u>101,000</u>	<u>106,500</u>	<u>113,000</u>
<u>62</u>				<u>101,500</u>	<u>107,000</u>	<u>113,500</u>
<u>63</u>				<u>102,000</u>	<u>108,000</u>	<u>114,500</u>
<u>64</u>				<u>102,500</u>	<u>108,500</u>	<u>115,000</u>

Part III

Description, Requirements and Limitations of Special Permits Available

**24VAC20-81-90. Single trip permit.**

Single trip permits are issued to cover one movement between two specific points. Single trip permits are vehicle specific and cannot be transferred between vehicle configurations. Most single trip permits are valid for a 13-day period; however the Hauling Permit Section may restrict any single trip permit movement to a lesser period depending on various circumstances such as weather, routes of travel, construction projects, overall dimensions of the vehicle configuration or other unforeseen circumstances. No refunds or credits will be granted for unused or expired permits.

Single trip permits are vehicle specific and cannot be transferred between vehicles. Since the permits are vehicle specific, the original permit or a legible copy of the entire permit is required to be carried in the transport vehicle. This permit shall be presented to Department of Motor Vehicles, law enforcement or Department of Transportation officials when requested.

Maximum Size and Weight Limitations for the Single Trip Permit

Height:	15 feet
Width:	15 feet
Length:	100 feet
Single Axle:	24,000 pounds
Tandem Axle:	44,000 pounds
Tri-Axle:	Maximum weight based on total amount of spacings between the centers of the first and last axle in the 3 axle group - see 24VAC20-81-80.
Quad Axle:	Maximum weight based on total amount of spacings between the centers of the first and last axle in the 4 axle group - see 24VAC20-81-80.
Gross Weight:	Maximum weight based on total number of axles in the configuration and total amount of spacings between the centers of the first and last axles - see 24VAC20-81-80.

**24VAC20-81-100. Superload single trip permit.**

A. Like the single trip permit, superload single trip permits are issued to cover one movement between two specific points. Superload single trip permit requests exceed the maximum weight or size limitations allowed on a single trip permit. Superload single trip permit requests require various levels of research and analysis and should be submitted to the

Hauling Permit Section at least 10 working days prior to the anticipated date of movement. All superload single trip permits are issued on a case-by-case basis, and only after an appropriate review or VDOT engineering analysis has determined that the vehicle configuration will not harm or damage bridges and structures on the designated routes of travel. Results of the review or engineering analysis may render the vehicle configuration ineligible for movement.

Superload single trip permits are vehicle specific and cannot be transferred between vehicles. Since superload single trip permits are vehicle specific, the original permit or a legible copy of the entire permit is required to be carried in the transport vehicle. This permit shall be presented to Department of Motor Vehicles, law enforcement or Department of Transportation officials when requested.

In cases where the superload single trip permit request has been denied due to weight, the customer may request that an in-depth engineering analysis be performed on the desired route of travel. VDOT structures and bridges engineers will perform the in-depth engineering analysis. The applicant is responsible for paying all expenses associated with the in-depth engineering analysis. All requests for an in-depth analysis must be submitted to the Hauling Permit Section in writing. Upon receipt of the letter requesting the in-depth analysis a member of the hauling permit staff will assist the applicant through the remainder of the process.

B. Requirements for superload single trip permits exceeding certain parameters are described in this subsection:

A letter of variance is required on all movements that exceed any of the following parameters: 18 feet in width; 250,000 pounds in weight; 200 feet in length; or 16 feet in height. The shipper or the manufacturer of the oversized or overweight item will submit the information listed below to the Virginia Department of Motor Vehicles: FAX: (804) 367-0063 or mailed to the Virginia Department of Motor Vehicles, Hauling Permit Section, P.O. Box 26302, Richmond, VA 23260. The letter shall list, in detail:

1. Name and description of the item being moved;
2. Overall loaded dimensions for the vehicle configuration to include height, width, length and gross weight;
3. Explanation of why the load cannot be reduced;
4. Explanation of why the load cannot be transported by air, rail or water;
5. Origin and destination specific to Virginia, including mileage and specific intersecting routes (e.g., Route 65 - one mile south of Route 2 in Campbell County);
6. Preferred routes of travel; and
7. Point of contact, someone within the company that can speak to the requested movement in case additional information is needed.

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C. In addition to the letter of variance all movements that exceed 18 feet in width or 16 feet in height may be required to submit a detailed travel plan, depending on the time of travel and the routes of travel. The plan should include but is not limited to the following:

1. The plan should address how to facilitate the movement of emergency vehicles responding to emergencies. The plan will also identify locations where the overdimensional configuration will pull over to allow movement of traffic. Traffic shall not be detained for more than 10 minutes if at all possible. The plan will also address layover locations.

2. Letters from property owners or public facilities giving permission to layover on their property until able to proceed in accordance with the permit. Each letter shall include the name, phone number and email address of the primary point of contact. The hauling permit staff will contact the point of contact to confirm the layover privileges on their property prior to DMV issuing the superload single trip permit.

3. Letters from local law-enforcement personnel agreeing to escort the overdimensional configuration through their jurisdiction. Each letter shall include the name, phone number and email address of the primary point of contact. The hauling permit staff will contact the point of contact to confirm their escorting role prior to DMV issuing the superload single trip permit.

4. Letters from affected utility, cable and telephone companies, agreeing to accompany the overdimensional configuration to lift overhead wires. Each letter shall include the name, phone number and email address of the primary point of contact. The hauling permit staff will contact the point of contact to confirm their role in the move prior to DMV issuing the hauling permit.

5. Letters from the Department of Transportation agreeing to accompany the overdimensional configuration to lift overhead traffic signals, remove traffic signals arms, or remove guardrails, or remove signs, or remove and or adjust any inventory maintained by their department. Each letter shall include the name, phone number and email address of the primary point of contact. The hauling permit staff will contact the point of contact to confirm their role in the move prior to DMV issuing the hauling permit.

## **24VAC20-81-110. General blanket permit.**

General blanket permits allow frequent movements within a specified time period on designated or unrestricted routes in Virginia. General blanket permits are issued on a case-by-case basis and only after appropriate reviews or analysis have been completed to ensure the vehicle configuration will not harm or damage bridges, structures, or other state inventory along the routes of travel.

General blanket permits are vehicle specific and cannot be transferred between vehicles. Since the permits are vehicle specific, the original permit or a legible copy of the entire permit is required to be carried in the transport vehicle. This permit shall be presented to Department of Motor Vehicles, law enforcement or Department of Transportation officials when requested.

All general blanket permits are issued through the Virginia Department of Motor Vehicle's headquarters office and all requests shall be made at least 10 workdays prior to the anticipated movement date.

Applicants who make multiple moves should strongly consider obtaining a general blanket. Generally, the larger the vehicle configuration, the more restrictive the regulations will be. General blanket permits should be used for core business needs or those moves that are the most frequent. For those rare or infrequent moves outside of core business transactions, routine single trip permits should be considered.

### Maximum Size and Weight Limitations for the General Blanket Permit

<u>Height:</u>	<u>14 feet</u>
<u>Width:</u>	<u>14 feet</u>
<u>Length:</u>	<u>85 feet (including front or rear overhang)</u>
<u>Rear Overhang:</u>	<u>10 feet</u>
<u>Front Overhang:</u>	<u>3 feet</u>
<u>Single Axle:</u>	<u>24,000 pounds</u>
<u>Tandem Axle:</u>	<u>44,000 pounds</u>
<u>Tri-Axle:</u>	<u>Maximum weight based on axle spacings between the centers of the first and last axle in the 3-axle group - see 24VAC20-81-80.</u>
<u>Quad Axle:</u>	<u>Maximum weight based on axle spacings between the centers of the first and last axle in the 4-axle group - see 24VAC20-81-80.</u>
<u>Gross Weight:</u>	<u>Maximum weight based on the total number of axles in the configuration and the total amount of spacings between the centers of the first and last axles - see 24VAC20-81-80.</u>

If the vehicle configuration exceeds any of the weight or width parameters defined for the general blanket permit, the applicant may be eligible to apply for the superload blanket permit or the superload single trip permit.

## **24VAC20-81-120. Superload blanket permit.**

When the vehicle configuration's single axle, tandem axle, tri-axle or width exceed the parameters allowed for the general blanket permit, the applicant may apply for the superload blanket permit. No superload blanket permit shall exceed 14 feet in height, 16 feet in width, 105 feet in length, or 150,000 pounds gross weight. Furthermore, no blanket permit shall have more than three feet of front overhang or 10 feet of rear overhang, which are both included in the length of 105 feet.

The superload blanket permit allows frequent movements within a specified time period statewide or on specific routes. All requests for the superload blanket permit must be submitted to the Hauling Permit Section at least 10 workdays in advance of the anticipated movement date. These permits are vehicle specific and can not be transferred between vehicle configurations. Superload blanket permits are issued on a case-by-case basis and only after the appropriate reviews or VDOT engineering analysis have been completed to ensure that the vehicle configuration will not harm or damage bridges, structures, or other state inventory on the routes of travel. Results of the reviews or engineering analysis may render the vehicle configuration ineligible to move under the authority of a superload blanket permit.

## **24VAC20-81-130. Exempted permits; eligibility requirements.**

Listed below are some of the most frequently requested exempt permits. Most exempt permits are reducible but have been granted statutory authority to operate on the state highway system. These permits are vehicle specific and cannot be transferred between vehicle configurations. The applicant must adhere to specific statutory criteria in order to qualify for these permits. For additional information concerning these permits contact the Virginia Department of Motor Vehicles at (804) 497-7135 or refer to the hauling permit website online at [www.dmvnow.com](http://www.dmvnow.com) or [www.dmv.virginia.gov](http://www.dmv.virginia.gov).

1. When transporting containerized cargo in a sealed seagoing container bound to or from a seaport, and the seagoing container has been or will be transported by marine shipment, the applicant is eligible to receive an exempt permit. The contents of the seagoing container shall not be changed from the time it is loaded by the consignor or his agents to the time it is delivered to the consignee or his agents.

2. Three- or four-axle vehicles with an axle spacing of at least 22 feet that are used exclusively for the mixing of concrete in transit or at a project site or for transporting necessary components in a compartmentalized vehicle to produce concrete immediately upon arrival at a project site are eligible to receive an exempt permit. This permit does

not authorize travel on the federal interstate highway system.

3. Three-, four-, five-, and six-axle vehicles are eligible to obtain a permit to haul coal from a mine or other place of production to a preparation plant, loading dock, or railroad. Hauling of coal is restricted to 85 miles from the origin to the destination and travel is not authorized on the federal interstate highway system.

Vehicles hauling gravel, sand, or crushed stone, and vehicles hauling liquids produced from gas or oil wells or water used for drilling and completion of a gas or oil well do not require a permit. Travel is restricted to no more than 50 miles from the origin to the destination. All movements are valid only within the counties that impose a tax on coal or gases extracted from the earth and no travel is allowed on the federal interstate highway system.

4. Three- or four-axle vehicles with an axle spacing of at least 22 feet hauling excavated materials from construction-related land clearing operations are eligible to receive an exempt permit. This permit does not authorize travel on the federal interstate highway system.

5. When hauling solid waste, other than hazardous waste, the applicant is eligible for an exempt permit. This permit is only limited to two- and three-axle vehicles. This permit does not authorize travel on the federal interstate highway system.

6. Vehicles used to haul farm produce grown in Virginia are eligible to receive an exempt permit. These permits are only valid in Accomack and Northampton counties.

7. Vehicles used exclusively to transport seed cotton modules are eligible to receive an exempt permit. This permit does not authorize travel on the federal interstate highway system.

8. Self-propelled motor vehicles manufactured for the specific purpose of supporting well-drilling machinery on the job site and whose movement on any highway is incidental to the purpose for which it was designed and manufactured for is eligible to receive an exempt permit. This permit does not authorize travel on the federal interstate highway system.

9. Vehicles or equipment that is registered in the name of the United States government, state or local agencies shall receive without cost, an overdimensional or overweight permit to move overdimensional or overweight items. Contractors moving items on behalf of the United States government, state or local agencies are not eligible to receive this permit at no cost.

10. A straight truck designed or used to carry fuel and having a capacity of less than 6,000 gallons is eligible for an exempt permit. The tank wagon is limited to two axles and shall not exceed a gross weight of 36,000 pounds, nor

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can it exceed 24,000 pounds on a single axle. This permit does not authorized travel on the federal interstate highway system.

11. For purposes of this section, "underground pipe cleaning equipment" means a self-propelled motor vehicle manufactured for the specific purpose of vacuuming and cleaning underground sanitary and storm pipe. "Hydroexcavating equipment" means a self-propelled motor vehicle manufactured for the specific purpose of digging with water and vacuuming of debris. "Water blasting equipment" means a self-propelled motor vehicle manufactured for the specific purpose of waterblasting flat concrete surfaces and vacuuming spent water for reuse. The above vehicles are eligible to receive an exempt permit. This permit does not authorized travel on the federal interstate highway system.

## Part IV Fees

### **24VAC20-81-140. Hauling permit administrative fees and other fees required by law; escort driver certification fees.**

#### Hauling Permits:

<u>Single Trip Hauling Permit</u>	<u>\$20</u>
<u>Superload Single Trip Permit</u>	<u>\$30</u>
<u>General Blanket Permit – 1 year</u>	<u>\$100</u>
<u>General Blanket Permit – 2 years</u>	<u>\$200</u>
<u>Superload Blanket Permit – 1 year or less</u>	<u>\$100</u>
<u>Tank Wagon Permit (1 year)</u>	<u>\$845</u>
<u>Exempt Blanket Permits</u>	<u>\$100</u>

In addition to the administrative fees listed above, Virginia law requires that all hauling permits be assessed an additional mileage fee if the vehicle configuration is overweight or if the equipment used is unlicensable in Virginia. Additional fees required by Virginia law may be applicable and will be collected as required. Refer to the hauling permit website at [www.dmvnow.com](http://www.dmvnow.com) for questions concerning fees.

#### Escort Driver Certification:

<u>Original Certification</u>	<u>\$25</u>
<u>Renewal</u>	<u>\$25</u>
<u>Reissue</u>	<u>\$15</u>
<u>Duplicate</u>	<u>\$15</u>

## Part V Travel Guidelines

### **24VAC20-81-150. Travel restrictions; holiday travel; days and times of travel; speed limits.**

A. Permitted vehicle configurations are allowed to travel on all holidays except the following state observed holidays: (i) New Year's Day, (ii) Memorial Day, (iii) Independence Day, (iv) Labor Day, (v) Thanksgiving Day, and (vi) Christmas Day.

On the holidays mentioned above, permits will not be valid from noon the preceding weekday through the holiday. If the observed holiday falls on a Monday the permit will not be valid from noon on the preceding Friday through Monday.

B. Normal times of travel for permitted loads are 30 minutes after sunrise to 30 minutes before sunset, Monday through Saturday. Vehicle configurations that are 16 feet wide or greater may be required to travel during the hours of darkness (9:30 p.m. to 5 a.m.). No permitted travel is allowed within the corporate limits of cities/towns between the hours of 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. except for configurations that are overweight or overlength (not exceeding 85 feet, including rear overhang) only. No travel is allowed on Sundays, except for loads that are permitted for overweight or overlength (not exceeding 85 feet, including rear overhang) only. The Hauling Permit Section shall have the authority to route vehicles outside the normal hours of travel or restrict times of travel during normal hours of travel if it is determined necessary giving primary consideration to the safety and well-being of the traveling public.

When road conditions, visibility or unfavorable weather conditions make traveling hazardous to the operator or to the traveling public, permitted vehicles are not authorized to operate unless responding to an emergency. Vehicles that are underway when inclement weather occurs shall exit the road at the first available safe location and park in a safe place until the weather clears or until road conditions improve to allow safe travel conditions. Law-enforcement judgment shall prevail in all circumstances.

C. Unless otherwise specified within the permit, the maximum speed limit for permitted vehicle configurations is the posted speed limit not to exceed 55 miles per hour.

## Part VI

### Escort Vehicles and Equipment Requirements; Escort Vehicle Driver Certification; and General Escorting Guidelines

### **24VAC20-81-160. Escort vehicles and equipment requirements.**

A. Depending on the routes of travel, escorts may be required for vehicle configurations exceeding 10 feet in width, 13 feet 6 inches in height, 85 feet in length, when more than 15 feet or more of front or rear overhang exist, or when determined as necessary by the issuing agent giving primary

consideration to the safety of the traveling public, the attributes of the configuration, and the geographical location of the move.

B. The escort vehicle shall be a truck not less than one-quarter ton-rated load capacity but not more than 17,000 pounds gross vehicle weight rating (GVWR) or a passenger vehicle of not less than 2,000 pounds gross weight. Escort vehicles shall not resemble nor be confused with law-enforcement or safety-assistance vehicles. Escort vehicles shall be in compliance with all state and local registration processes required by the state in which the vehicle is registered. Escort vehicles shall not be overdimensional or overweight while in use performing escorting duties. They are not permitted to pull a trailer of any kind while performing escorting duties.

C. All escort vehicles shall be equipped with a two-way radio communication system to maintain communications between the permitted vehicle driver and all escort vehicles in the group.

D. Front or lead escort vehicles are required to have a height pole/hot-pole when required by permit. While performing escorting duties the pole shall be extended at least three inches above the specified height of the vehicle configuration being escorted.

E. Escort vehicles headlamps shall be on at all times while escorting overdimensional/overweight movements.

F. All escort vehicles shall have at least one, rotating or strobe, positioned on top of the escort vehicle. The light must be visible for a distance of at least 500 feet in all directions by approaching vehicles.

G. Paddles shall be at least 24 inches by 24 inches with six-inch high lettering. For greater visibility, a high-intensity flashing stop/slow paddle may be used.

H. All flags used for flagging purposes shall be red or any highly fluorescent color, not less than 18 inches square and in good condition. Flags shall be placed at the extremities of a vehicle load to identify overwidth or secured at the end of the load to identify overhang.

I. Individuals performing flagging activities shall wear a hard hat and a red or any highly visible fluorescent colored jacket or vest.

J. Escort vehicles shall have signs, descriptive of the load it is escorting, i.e., "Wide Load" or "Oversize Load" or "Overweight Load." At a minimum, the signs shall be displayed in black eight-inch high letters with 1-1/2 inch brush strokes on a yellow banner. The banner shall be mounted on the front and rear bumper of the escort vehicle. If displayed on the roof of the escort vehicle other drivers must be able to read the signs when approaching or following the escort vehicle.

K. A minimum of one Underwriters Laboratories (U.L.) or Factory Mutual Laboratories (F.M.) approved, five pounds or greater, Type "BC" or "ABC" fire extinguisher shall be carried in the escort vehicle or escort vehicles.

L. Reflective triangles or road flares shall be used to warn oncoming or approaching vehicles of a breakdown.

## **24VAC20-81-170. Escort vehicle driver certification.**

Certification as an escort vehicle driver is mandatory when escorting oversize loads exceeding 12 feet in width, 85 feet in length, or 14 feet in height. Certification is also required when escorting a load with 15 feet or more of rear overhang or 10 feet or more of front overhang, or whenever an off-centered load exceeds five feet. The overhang of an off-centered load must be loaded to the passenger side of the transport vehicle.

Virginia residents who possess a valid Virginia driver's license shall obtain their certification through Virginia's Escort Vehicle Driver Certification Program. Non-Virginia residents may be certified through Virginia's Escort Vehicle Driver Certification Program or through a certification program from another state. Regardless of what state certifies the driver as an escort driver, certification is considered invalid if the driver's license is not valid.

The Virginia Escort Vehicle Driver Certification test is available at all Virginia Department of Motor Vehicles Customer Service Center locations. The applicant is required to successfully pass a multiple-choice exam before a certificate can be issued.

Successful applicants shall carry the certification document with them while escorting vehicle configurations that require certified escort vehicle drivers. Certification, along with a driver's license, must be presented when requested by any Department of Motor Vehicles, law enforcement or Department of Transportation officials when requested. Failure to have the certification in possession while escorting a permitted load that requires a certified escort will cause the movement to be delayed until proper escorts and credentials are in place.

Additional information concerning Escort Vehicle Driver Certification in Virginia can be requested by calling the Hauling Permit Section at (804) 497-7135.

## **24VAC20-81-180. General escorting guidelines.**

Escort vehicle drivers or certified escort vehicle drivers may be required depending on the routes of travel and the overall dimensions of the vehicle configuration. Escorts will not be picked up or dropped as the permitted configuration travels through the Commonwealth. Escorts, when required by permit will stay with the vehicle configuration throughout the duration of the move. General guidelines as to when escorts are required follows; this listing is not all inclusive:

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1. One front escort is required on all roads if the permitted load exceeds 10 feet in width or 75 feet in overall length.
2. One certified front escort is required on all roads if the permitted load exceeds 12 feet in width or 85 feet in length.
3. One front and two rear escorts, all certified, will be required on all roads if the permitted load exceeds 14 feet in width.
4. One front escort is required on all roads when the front overhang exceeds four feet.
5. One certified front escort is required on all roads when the front overhang is 10 feet or more.
6. One rear escort will be required on all roads when the rear overhang is 10 feet or more.
7. One certified rear escort is required on all roads when the rear overhang is 15 feet or more.
8. One certified front escort equipped with height pole is required on all roads when the permitted load exceeds 14 feet in height.
9. One front escort is required on all roads when the off-centered load exceeds three feet on the passenger side of the vehicle configuration.
10. Two certified front escorts will be required when the off-centered load exceeds five feet on the passenger side of the vehicle configuration.
11. One front and one rear escort, both certified, is required on all roads when the permitted load exceeds 100 feet in overall length.
12. Two front and two rear escorts, all certified, will be required on all roads when the permitted load exceeds 18 feet in width or 200 feet in length.

## Part VII

### Emergency and National Defense Moves

#### **24VAC20-81-190. Emergency moves.**

Requests for emergency moves will be carefully reviewed on a case-by-case basis. An emergency is defined as "a calamity, existing or imminent, caused by fire, flood, riot, windstorm, explosion or act of God, which requires immediate remedial action to protect life or property." In some instances waivers are issued by the appropriate state authority exempting overweight/overwidth carriers from statutory size and weight limitations who are responding to and supporting relief efforts. Maximum size and weight limitations will be identified in the waiver and all requests that exceed those limitations will have to apply for a hauling permit in accordance with established processes that govern the permitting process.

Emergency move requests and questions concerning waivers issued in support of a declared relief effort or disaster shall be made through the Virginia Department of Transportation's Emergency Operations Center (TEOC) at 1-800-367-7623. TEOC is open 24 hours a day, seven days a week. During normal business hours, contact the Hauling Permit Section at (804) 497-7135.

Blanket permit users may request "emergency travel regulations" when ordering permits if there is a possibility that the equipment or commodity permitted will be required in support of an emergency as defined above. Having emergency travel regulations in the permit may allow response to the emergency using the blanket permit, if that permit covers the routes of travel intended to use. However, the permittee must contact the Virginia Department of Transportation's Emergency Operations Center and give them vital travel information that will be passed on to the Virginia State Police, all applicable law-enforcement jurisdictions, and DMV weigh stations.

#### **24VAC20-81-200. National defense moves.**

The U.S. Department of Defense's Military Traffic Command shall be the sole certifying agency during peacetime for all movements made by an agency declared essential to the national defense. During a national emergency, movements essential to national defense would be far greater in scope, and those not under direct control of one of the military departments or Department of Defense agencies would be certified by the appropriate emergency transportation authority.

## Part VIII

### Responsibilities

#### **24VAC20-81-210. Compliance with state laws and permit requirements.**

A. The acceptance and use of the Virginia hauling permit by the applicant or his designee is his agreement that he will proof the permit for accuracy prior to traveling on Virginia's highways. If the document is incorrect, the permittee will immediately contact the Hauling Permit Section to obtain the proper permit prior to traveling over Virginia's highways. The permittee accepts full responsibility and the consequences associated with having a hauling permit containing erroneous or incorrect information.

B. The acceptance and use of the Virginia hauling permit by the applicant is his agreement that he has met all legal requirements concerning operational authority imposed by motor vehicle laws of Virginia, the Department of Motor Vehicles, or the Interstate Commerce Commission.

C. The acceptance and use of the Virginia hauling permit by the applicant is his agreement that each vehicle permitted is insured no less than that required by the Commonwealth of Virginia.

D. The acceptance and use of the Virginia hauling permit by the applicant is his agreement to pay for all damages and cost involved to persons or property as a result of the permitted movement.

E. The acceptance and use of the Virginia hauling permit by the applicant is his agreement that he will comply with all the terms and conditions as specified within the permit.

F. The permittee, an agent of the permittee, or any member of the permittee's company, shall within 15 workdays notify the Hauling Permit Section, if the permitted vehicle is involved in any accident. Failure to notify the Hauling Permit Section of involvement in an accident may result in suspension or denial of permitting privileges as specified in 24VAC20-81-230.

### **24VAC20-81-220. Injury or damage.**

The permittee assumes all responsibility for an injury to persons or damage to public or private property caused directly or indirectly by the transportation of vehicles and loads moving under the authority of a state-issued permit. Furthermore, the permittee agrees to hold the Commonwealth of Virginia, Department of Motor Vehicles and its employees and other state agencies and their employees harmless from all suits, claims, damages or proceedings of any kind, as a direct or indirect result of the transportation of the permitted vehicle.

#### Part IX

Denial; Revocation; Refusal to Renew; Appeal; Invalidation

### **24VAC20-81-230. Denial; revocation; refusal to renew; appeal; invalidation.**

A. An overweight or oversize permit may be revoked by the Department of Motor Vehicles upon written findings that the permittee violated the terms of the permit, which shall incorporate by reference these rules, as well as state and local laws and ordinances regulating the operation of overweight or oversized vehicles. Repeated violations may result in a permanent denial of the right to use the state highway system or roads for transportation of overweight and oversized vehicle configurations. A permit may also be revoked for misrepresentation of the information on the application, fraudulently obtaining a permit, alteration of a permit, or unauthorized use of a permit.

B. Hauling permits may be denied to any applicant or company, or both, for a period not to exceed one year when the applicant or company or both has been notified in writing by the Department of Motor Vehicles designee that violations existed under a previously issued permit. Customers who are delinquent in payment to other DMV functions will be denied a hauling permit until their delinquent account or accounts are satisfied.

C. No permit application request shall be denied or revoked, or permit application renewal refused, until a written notice of

the violation of the issued permit has been furnished to the applicant. The permittee may appeal in writing to the Assistant Commissioner of Motor Carrier Services or his designee within 10 working days of receipt of written notification of denial or revocation setting forth the grounds for making an appeal. Upon receipt of the appeal, the Assistant Commissioner for Motor Carrier Services or his designee will conduct an informal fact-finding process conforming to the requirements of the Code of Virginia and will issue a case decision that will be the final administrative step. Judicial review of such decision shall be available pursuant to § 2.2-4025 of the Administrative Process Act. Upon revocation of the permit, it must be surrendered without consideration for refund or credit of fees. Upon restoration of permit privileges a new hauling permit must be obtained prior to movement on the state highway system.

D. A hauling permit may be invalidated and confiscated by law-enforcement officials or weight-enforcement officials if the permitted vehicle or vehicle combination: is found to be operating off route; has fewer axles than that required within the permit; is moving a commodity other than that specified within the permit; is willfully (intentionally) traveling outside the hours specified within the permit; is traveling without escorts as required by the permit; or if the driver does not have the entire permit in the vehicle. In these situations, in addition to taking legal enforcement actions, law- and weight-enforcement personnel shall have the authority to direct the vehicle configuration to a safe location, at the permittee's expense, and detain the vehicle configuration until it meets all of the requirements of the permit as stated or until a new hauling permit is issued.

#### Part X

Transportation of Explosives, Radioactive and Other Hazardous Materials

### **24VAC20-81-240. Transportation of explosives, radioactive and other hazardous materials.**

A. A person, shipper or carrier transporting or proposing to transport explosives or other hazardous materials shall do so in compliance with all provisions of 49 CFR Parts 100 through 180. Hazardous materials are those described by class in 49 CFR Parts 173 through 180.

B. All transporters who transport hazardous waste that originates or terminates in Virginia for the purpose of storage, treatment or disposal shall apply for and receive an Environmental Protection Agency (EPA) identification number that is unique to the transporter, and apply for a transportation permit from the Virginia Department of Environmental Quality, Waste Division.

Transporters of hazardous waste generated outside of Virginia and designated for delivery to a treatment, storage or disposal facility in another state shall conform with the manifest requirements of those states or EPA, as prescribed in

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# Regulations

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40 CFR Part 262. Specific questions regarding the movement and permitting of hazardous materials and hazardous waste should be addressed to:

Department of Environmental Quality  
629 East Main Street  
P.O. Box 10009  
Richmond, VA 23240-0009

Phone: 804-698-4249 (Hazardous Materials)  
804-698-4237 (Hazardous Waste)

Questions regarding the movement of Hazardous Materials through tunnels or bridges, or both, shall be addressed to:

Department of Transportation  
Hazardous Materials Officer  
1221 East Broad Street  
Richmond, VA 23219  
Phone: 804-371-0891

Questions regarding hazardous material spills or incidents shall be addressed to: CHEMTREC 1-800-424-9300 (24 hours a day).

## Part XI Weigh Stations; Location

### **24VAC20-81-250. Permanent weigh stations.**

Operators of trucks which have a registered gross weight in excess of 7,500 pounds are required by law to drive their vehicles onto scales for weight inspection as directed by either a police officer or regulatory highway signs. By Virginia law, a police officer may require the operator of a truck to drive a distance not to exceed 10 road miles to a weigh facility or location for weight inspection. Refusal to drive onto scales for inspection is a misdemeanor. Locations for the weigh stations in Virginia are as follows:

<u>Station</u>	<u>Route</u>	<u>Location</u>
<u>1. Alberta</u>	<u>85</u>	<u>Alberta</u>
<u>2. Aldie</u>	<u>50</u>	<u>Aldie</u>
<u>3. Bland</u>	<u>77</u>	<u>Bland</u>
<u>4. Carson</u>	<u>95</u>	<u>Carson</u>
<u>5. Dahlgren</u>	<u>301</u>	<u>Dahlgren</u>
<u>6. Dumfries</u>	<u>95</u>	<u>Triangle</u>
<u>7. Hollins</u>	<u>11</u>	<u>Hollins</u>
<u>8. Middletown</u>	<u>11</u>	<u>Middletown</u>
<u>9. New Church</u>	<u>13</u>	<u>Temperanceville</u>
<u>10. Sandston</u>	<u>64</u>	<u>Sandston</u>
<u>11. Stephens City</u>	<u>81</u>	<u>Stephens City</u>
<u>12. Suffolk</u>	<u>58</u>	<u>Suffolk</u>

### 13. Troutville                      81                      Troutville

VA.R. Doc. No. R07-271; Filed October 2, 2008, 1:16 p.m.

## **MOTOR VEHICLE DEALER BOARD**

### **Final Regulation**

<p><u>REGISTRAR'S NOTICE:</u> The following model public participation guidelines 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.</p>
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Titles of Regulations: **24VAC22-10. Public Participation Guidelines (repealing 24VAC22-10-10 through 24VAC22-10-140).**

**24VAC22-11. Public Participation Guidelines (adding 24VAC22-11-10 through 24VAC22-11-110).**

Statutory Authority: §§ 2.2-4007.02 and 46.2-1506 of the Code of Virginia.

Effective Date: November 26, 2008.

Agency Contact: Bruce Gould, Executive Director, Motor Vehicle Dealer Board, 2201 West Broad Street, Suite 104, Richmond, VA 23220, telephone (804) 367-1100, FAX (804) 367-1053, or email [bruce.gould@mvdv.virginia.gov](mailto:bruce.gould@mvdv.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 actions; (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

#### **24VAC22-11-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Motor Vehicle Dealer 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).

#### **24VAC22-11-20. 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 Motor Vehicle Dealer Board, 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](http://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

#### **24VAC22-11-30. 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.

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# Regulations

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## **24VAC22-11-40. 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 24VAC22-11-30, 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

## **24VAC22-11-50. 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.

## **24VAC22-11-60. 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.

## **24VAC22-11-70. 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.

**24VAC22-11-80. 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.

**24VAC22-11-90. 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.

**24VAC22-11-100. 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.

**24VAC22-11-110. 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. R09-1510; Filed October 7, 2008, 3:24 p.m.

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# GENERAL NOTICES/ERRATA

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## DEPARTMENT OF ENVIRONMENTAL QUALITY

### **Proposed Consent Order - Fry's Spring Beach Club, Incorporated**

An enforcement action has been proposed for Fry's Spring Beach Club, Incorporated, for alleged violations in Charlottesville, Albemarle County. A proposed consent order describes a settlement to resolve an alleged unauthorized discharge to an unnamed tributary to the Rivanna River. A description of the proposed action is available at the DEQ office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Steven W. Hetrick will accept comments by email [shhetrick@deq.virginia.gov](mailto:shhetrick@deq.virginia.gov), FAX (540) 574-7878 or postal mail, Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801, from October 27, 2008, to November 26, 2008.

### **Proposed Consent Order - Houff's Feed and Fertilizer Company, Incorporated**

An enforcement action has been proposed for Houff's Feed and Fertilizer Company, Incorporated, for alleged violations. A proposed consent order describes a settlement to resolve alleged unpermitted application of food processing sludge on 1.2 acres in Rockingham County. A description of the proposed action is available at the DEQ office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Steven W. Hetrick will accept comments by email [shhetrick@deq.virginia.gov](mailto:shhetrick@deq.virginia.gov), FAX (540) 574-7878 or postal mail Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801, from October 27, 2008, to November 26, 2008.

### **Proposed Consent Order - HHHunt Corporation**

An enforcement action has been proposed for HHHunt Corporation for alleged violations at the Rutland development in Hanover County. The proposed consent order describes the alleged violations, requires corrective action and contains a civil charge. A description of the proposed action is available at the DEQ office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Allison Dunaway will accept comments by email at [acdunaway@deq.virginia.gov](mailto:acdunaway@deq.virginia.gov), FAX (804) 527-5106 or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Rd., Glen Allen, VA 23060, from October 22, 2008, to November 26, 2008.

### **Proposed Consent Order - Lovettsville Sewage Treatment Plant**

An enforcement action has been proposed for the Town of Lovettsville for alleged violations in Loudoun County at the Lovettsville Sewage Treatment Plant. The consent order describes a settlement to resolve permit effluent violations at

the Lovettsville Sewage Treatment Plant. A description of the proposed action is available at the DEQ office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Daniel Burstein will accept comments by email [dpburstein@deq.virginia.gov](mailto:dpburstein@deq.virginia.gov), FAX (703) 583-3821, or postal mail, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from October 28, 2008, through November 27, 2008.

### **Proposed Consent Special Order - Motion Control Industries, Inc.**

An enforcement action has been proposed for Motion Control Industries, Inc., for alleged violations in South Hill, Virginia (Mecklenburg County). The Department of Environmental Quality (DEQ) proposes to issue a special order by consent as a settlement to resolve compliance deficiencies of the Virginia Water Control Law. A description of the proposed action is available at the DEQ office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). G. Marvin Booth III will accept comments by email [gmbooth@deq.virginia.gov](mailto: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 October 27, 2008, to November 27, 2008.

### **Proposed Consent Special Order - Rockbridge Farmers Cooperative, Incorporated**

An enforcement action has been proposed for Rockbridge Farmers Cooperative, Incorporated, for alleged violations in Rockbridge County. A proposed consent order describes a settlement to resolve an alleged violation of an unauthorized discharge to an unnamed tributary to the Maury River. A description of the proposed action is available at the DEQ office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Steven W. Hetrick will accept comments by email [shhetrick@deq.virginia.gov](mailto:shhetrick@deq.virginia.gov), FAX (540) 574-7878, or postal mail Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801, from October 27, 2008 to November 26, 2008.

### **Proposed Consent Order - Mr. Jesse Allen Wright**

An enforcement action has been proposed for Mr. Jesse Allen Wright, for alleged violations in Henrico County. The consent order settles Mr. Wright's failure to submit a notification form to DEQ and the failure to perform closure requirements. A description of the proposed action is available at the DEQ office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Jennifer Hoeffner will accept comments by email [jhoeffner@deq.virginia.gov](mailto:jhoeffner@deq.virginia.gov), FAX (804) 527-5106, or postal mail Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from October 22, 2008, to November 26, 2008.

**Restore Water Quality - Indian, Dymer, Tabbs, and Antipoison Creeks**

Public meeting: November 14, 2008, at the Lancaster Community Library, 235 School Street, Kilmarnock, VA 22482. A technical advisory committee (TAC) meeting will be held from 1:30 p.m. - 3:30 p.m. and the public meeting from 6 p.m. - 8 p.m. Both meetings are open to the public.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are presenting the final draft report of a study to restore water quality for a shellfish growing area, a public comment opportunity, a technical advisory committee meeting, and public meeting.

Meeting description: Final TAC and public meeting on a study to restore water quality for shellfish growing areas along Indian, Dymer, Tabbs, and Antipoison Creeks, which are impaired due to bacterial violations.

Description of study: Virginia agencies have been working to identify sources of the bacterial contamination in the shellfish growing waters of the (tidal) Indian, Dymer, Tabbs, and Antipoison Creeks and their tributaries, an area totalling approximately two square miles in Northumberland and Lancaster counties. These streams are impaired for failure to meet the designated use of shellfish consumption because of bacterial water quality standard violations.

Stream	County	Area (miles <sup>2</sup> )	Impairment
Indian Creek (headwaters to south of Arthur Cove)	Northumberland & Lancaster	0.42	Shellfish Use (Fecal Coliform) bacteria
Unnamed Cove	Northumberland	0.02	
Bells Creek	Northumberland	0.05	
Henrys Creek	Northumberland	0.10	
Barnes Creek	Northumberland	0.27	
Long Creek	Lancaster	0.02	
Dymer Creek (headwaters to south of Johnson Creek)	Lancaster	0.34	
Hunts Cove	Lancaster	0.04	
Lees Cove	Lancaster	0.02	
Georges Cove	Lancaster	0.03	
Tabbs Creek	Lancaster	0.24	
Antipoison Creek (headwaters to mouth)	Lancaster	0.45	
Davenport Creek	Lancaster	0.02	

The study reports the current status of the creeks via sampling performed by the Virginia Department of Health; Division of Shellfish Sanitation, shellfish area condemnations and the sources of bacterial contamination. The study recommends total maximum daily loads, or TMDLs, for the impaired

waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels have to be reduced to the TMDL amount.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, which will expire on December 15, 2008. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA, 23060, telephone (804) 527-5124, FAX (804)-527-5106, or email [mjsmigo@deq.virginia.gov](mailto:mjsmigo@deq.virginia.gov).

**Restore Water Quality - North Fork Holston River**

Announcement of an effort to restore water quality in the North Fork Holston River in Smyth County, Virginia.

Public meeting Location: Friend's Community Church, 145 Palmer Ave., Saltville, Virginia, on November 4, 2008, from 6 p.m. to 8 p.m. and at Hilton Elementary School, 303 Academy Rd., Hiltons, Virginia, on November 6, 2008.

Purpose of notice: The Virginia Department of Environmental Quality is announcing a study to restore water quality, a public comment opportunity, and public meeting.

Meeting description: First public meeting on a study to restore water quality.

Description of study: DEQ is working to identify sources of mercury contamination in fish in the waters of the North Fork Holston. The "impaired" stream segments total approximately 81 miles. The stream is impaired based on exceedences of the screening value for mercury in fish tissue.

During the study, the sources of the mercury contamination will be identified and total maximum daily loads, or TMDLs, developed for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, contamination levels must be reduced to the TMDL amount.

How a decision is made: The development of a TMDL includes public meetings and a public comment period once the study report is drafted. After public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency for approval.

How to comment: DEQ accepts written comments by email, fax or postal mail. Written comments should include the name, address and telephone number of the person commenting and be received by DEQ during the comment period, November 4, 2008, to December 8, 2008. DEQ also

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## General Notices/Errata

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accepts written and oral comments at the public meeting announced in this notice.

To review fact sheets: Fact sheets are available on the impaired waters from the contacts below or on the DEQ website at [www.deq.virginia.gov/tmdl](http://www.deq.virginia.gov/tmdl).

Contact for additional information: Shelley Williams, Regional TMDL Coordinator, Department of Environmental Quality, Southwest Regional Office, 355 Deadmore Street, P.O. Box 1688, Abingdon, VA 24212-1688, telephone (276) 676-4845, FAX (276) 676-4899, or email [sdwilliams@deq.virginia.gov](mailto:sdwilliams@deq.virginia.gov).

### Restore Water Quality - Oyster and Mosquito Creeks

Public meeting: November 14, 2008, at the Lancaster Community Library, 235 School Street, Kilmarnock, VA 22482. A technical advisory committee (TAC) meeting will be held from 4 p.m. - 5 p.m. and the public meeting from 8 p.m. - 9 p.m. Both meetings are open to the public.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are announcing a study to restore water quality for a shellfish growing area, a public comment opportunity, a technical advisory committee meeting, and public meeting.

Meeting description: First TAC and public meeting on a study to restore water quality for shellfish growing areas along Oyster and Mosquito Creeks, which are impaired due to bacterial violations.

Description of study: Virginia agencies are working to identify sources of the bacterial contamination in the shellfish growing waters of the (tidal) Oyster and Mosquito Creeks and their tributaries, an area totalling approximately 0.178 square miles in Lancaster County. These streams are impaired for failure to meet the designated use of shellfish consumption because of bacterial water quality standard violations.

Stream	County	Area (miles <sup>2</sup> )	Impairment
Oyster Creek	Lancaster	0.11	Shellfish Use (Fecal Coliform) bacteria
Mosquito Creek	Lancaster	0.068	

The study reports the current status of the creeks via sampling performed by the Virginia Department of Health; Division of Shellfish Sanitation, shellfish area condemnations and the possible sources of bacterial contamination. The study recommends total maximum daily loads, or TMDLs, for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality

standards. To restore water quality, bacterial levels have to be reduced to the TMDL amount.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, which will expire on December 15, 2008. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804) 527-5106, or email [mjsmigo@deq.virginia.gov](mailto:mjsmigo@deq.virginia.gov).

### Total Maximum Daily Load (TMDL) - Four Mile Run

Announcement of a total maximum daily load (TMDL) study to restore water quality in the bacteria impaired portion of tidal Four Mile Run.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Conservation and Recreation (DCR) announce the first technical advisory committee (TAC) meeting to introduce the Tidal Four Mile Run Bacteria TMDL study.

Technical advisory committee meeting: Thursday, October 30, 2008, 10 a.m. – Noon, 1015 North Quincy Street, Arlington County Central Library, Second Floor Meeting Room, Arlington, VA 22201

Meeting description: This is the first meeting to introduce this project to the TAC. The purpose of the TAC will be to provide technical input and insight for the project, and to assist with stakeholder and public participation.

Description of study: The tidal portion of Four Mile Run has been identified as impaired on the Clean Water Act § 303(d) list for not supporting the primary contact recreation use due to elevated levels of E. coli bacteria. Virginia agencies are working to identify the sources of bacteria contamination in this stream segment. The impaired segment of Four Mile Run is located in Arlington County. The Four Mile Run watershed covers parts of the City of Alexandria, City of Falls Church, Arlington County, and Fairfax County. Below is a description of the impaired portion of Four Mile Run that will be addressed in this study:

Stream Name	Locality	Impairments	Area (miles <sup>2</sup> )	Upstream Limit	Downstream Limit
Four Mile Run	Arlington County	Recreational use Impairment due to E. coli bacteria	0.0516	Tidal waters of Four Mile Run, approximately 1.46 rivermiles upstream from the mouth of the river	Confluence with the Potomac River

This study will focus on the tidal portion of Four Mile Run. A bacteria TMDL for the nontidal portion of Four Mile Run was completed in 2002. During this study, DEQ will develop a total maximum daily load, or a TMDL, for the impaired stream segment. A TMDL is the total amount of a pollutant a water body can receive and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL allocated amount.

How to comment: The public comment period on the materials presented at the TAC meeting will extend from October 30, 2008, to December 1, 2008. DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting, and be received by DEQ during the comment period. Please send all comments to the contact listed below.

Contact for additional information: Katie Conaway, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3804, or email [mkconaway@deq.virginia.gov](mailto:mkconaway@deq.virginia.gov).

**Total Maximum Daily Load (TMDL) - Pocomoke Sound/Pocomoke River**

The Virginia Department of Environmental Quality will provide a public comment period for a water quality study for Pocomoke Sound/Pocomoke River, located in Accomack County.

The report may be accessed on the DEQ website at [www.deq.virginia.gov/tmdl](http://www.deq.virginia.gov/tmdl).

Pocomoke Sound (VAT-C09E-10) was identified in Virginia's 1998 303(d) TMDL Priority List and Report as impaired for not supporting the shellfishing use. The impairment is based on the shellfish harvesting condemnation of Growing Area 75 imposed by the Virginia Department of Health-Division of Shellfish Sanitation.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL priority list and report and subsequent water quality assessment reports.

During the study, a total maximum daily load was developed for the impaired waters. A TMDL is the total amount of a

pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount. The Virginia Departments of Environmental Quality, Conservation and Recreation, and Health are working to identify the sources of pollution in the watersheds of these streams.

The public comment period will extend from October 27, 2008, through December 11, 2008. A public meeting will be held upon request.

For additional information or to submit comments, contact Jennifer Howell, Virginia Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, or email [jshowell@deq.virginia.gov](mailto:jshowell@deq.virginia.gov).

**Total Maximum Daily Load (TMDL) - Strait Creek and West Strait Creek**

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation seek written and oral comments from interested persons on the development of total maximum daily loads (TMDLs) for Strait Creek and West Strait Creek in Highland County. West Strait Creek was listed on the 1996 303(d) TMDL priority list and report as impaired due to violations of the state's general (benthic) standard for aquatic life. The benthic impairment extends for 1.17 miles from the headwaters downstream to an unnamed tributary originating on Miracle Ridge. In addition, Strait Creek was listed on the 2002 303(d) TMDL Priority List and Report as impaired due to violations of the state's general (benthic) standard for aquatic life. This impairment extends for 3.24 miles from the confluence with West Strait Creek to the confluence with the South Branch Potomac River.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report. DEQ has developed sediment, ammonia, and biochemical oxygen demand (BOD) TMDLs to address the benthic impairment in West Strait Creek, and DEQ has developed a sediment TMDL to address the benthic impairment in Strait Creek. DEQ is soliciting public comment on the draft report for these TMDLs. The draft report will be available for review and download from the DEQ website at:

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## General Notices/Errata

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<https://www.deq.virginia.gov/TMDLDataSearch/DraftReports.aspx> beginning on or before November 12, 2008.

The final public meeting on the development of these TMDLs will be held on Wednesday, November 12, 2008, 7 p.m. at the Highland County Modular Conference Center, Spruce Street, Monterey, VA.

The public comment period for the draft TMDLs will end on December 12, 2008. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Robert Brent, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7848, FAX (540) 574-7878, or email [mbrent@deq.virginia.gov](mailto:mbrent@deq.virginia.gov).

### STATE LOTTERY DEPARTMENT

#### Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on October 8, 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 Sixty-Three (08)

"World Poker Tour ® \$100,000 Hold'em Poker Sweepstakes" (effective 10/7/08)

### VIRGINIA BOARD OF PSYCHOLOGY

#### Notice of Periodic Review

The Virginia Board of Psychology is conducting a periodic review of its current regulations governing the practice of psychology and is requesting comment on the following current regulations:

18VAC125-20, Regulations Governing the Practice of Psychology

The board will consider whether the existing regulations are essential to protect the health, safety and welfare of the public in providing assurance that licensed practitioners are competent to practice. Alternatives to the current regulations or suggestions for clarification of the regulation will also be received and considered.

Comment begins on October 27, 2008, and ends on November 26, 2008.

If any member of the public would like to comment on these regulations, please send comments by the close of the comment period to: Elaine J. Yeatts, Senior Policy Analyst,

Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233.

Comments may also be emailed to [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov) or faxed to (804) 527-4434.

Regulations may be viewed online at [www.dhp.virginia.gov](http://www.dhp.virginia.gov) or copies will be sent upon request.

### STATE BOARD OF SOCIAL SERVICES

Pursuant to Executive Order Number 36 (2006), the Department of Social Services is currently reviewing 22VAC40-295, Temporary Assistance for Needy Families, to determine if it should be terminated, amended, or retained in its current form. The review will be guided by the principles listed in Executive Order Number 36 (2006) and in the department's plan for review of existing agency regulations.

The department seeks public comment regarding the regulation's interference in private enterprise and life, essential need of the regulations, less burdensome and intrusive alternatives to the regulations, specific and measurable goals that the regulation is intended to achieve, and whether the regulation is clearly written and easily understandable.

Public comment period: October 27, 2008, to November 17, 2008.

Written comments may be submitted until November 17, 2008, in care of Mark L. Golden, TANF Program Manager, Division of Benefit Programs, 7 North 8th Street, Richmond, VA 23219, FAX (804) 726-7356, or email to [mark.golden@dss.virginia.gov](mailto:mark.golden@dss.virginia.gov).

### STATE WATER CONTROL BOARD

#### Proposed Consent Order - Concrete Precast Systems, Inc. and Coastal Precast Systems, LLC

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for a facility in Chesapeake, Virginia.

Public comment period: October 27, 2008, to November 26, 2008.

Consent order description: The State Water Control Board proposes to issue a consent order to Concrete Precast Systems, Inc., and Coastal Precast Systems, LLC, to address alleged violations of Virginia State Water Control Law. The location of the facility where the alleged violations occurred is 1320 Yacht Drive, Chesapeake. The consent order describes a settlement to resolve alleged violations of the facility Virginia Pollutant Discharge Elimination System Permit and includes a civil charge.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the

name, address and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at [www.deq.virginia.gov](http://www.deq.virginia.gov).

Contact for public comments, document requests and additional information: Paul R. Smith, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2020, FAX (757) 518-2009, or email [prsmith@deq.virginia.gov](mailto:prsmith@deq.virginia.gov).

## VIRGINIA CODE COMMISSION

### Notice to State Agencies

**Mailing Address:** Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

### Filing Material for Publication in the Virginia Register of Regulations

Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the Virginia Register of Regulations. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file print copies of regulatory packages. Until that time, agencies may file petitions for rulemaking, notices of intended regulatory actions and general notices in electronic form only; however, until further notice, agencies must continue to file print copies of proposed, final, fast-track and emergency regulatory packages.

## ERRATA

### CRIMINAL JUSTICE SERVICES BOARD

**Title of Regulation:** 6VAC20-160. Rules Relating to the Court-Appointed Special Advocate Program.

**Publication:** 25:2 VA.R. 141-146 September 29, 2008.

**Correction to Final Regulation:**

Page 144, in 6VAC20-160-40 E 2, line 1, strike "Program/volunteer coordinator"

VA.R. Doc. No. R07-02

### PESTICIDE CONTROL BOARD

**Title of Regulation:** 2VAC20-51. Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act.

**Publication:** 25:3 VA.R. 345-353 October 13, 2008.

**Correction to final regulation:**

The sections amended were incorrectly listed. The sections amended should appear as follows:

(amend 2VAC20-51-10, 2VAC20-51-20, 2VAC20-51-30, 2VAC20-51-40, 2VAC20-51-50, 2VAC20-51-70, 2VAC20-51-90, 2VAC20-51-100, 2VAC20-51-160, 2VAC20-51-170, 2VAC20-51-200, 2VAC20-51-210)

VA.R. Doc. No.R04-77

### STATE BOARD OF CORRECTIONS

**Title of Regulation:** 6VAC15-70. Standards for Community Residential Programs.

**Publication:** 25:3 VA.R. 366-373 October 13, 2008.

**Correction to final regulation:**

The sections amended were incorrectly listed. The sections amended should appear as follows:

(amend 6VAC15-70-10, 6VAC15-70-40 through 6VAC15-70-130, 6VAC15-70-160)

VA.R. Doc. No.R09-1632

### STATE WATER CONTROL BOARD

**Title of Regulation:** 9VAC25-640. Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements.

**Publication:** 25:2 VA.R. 206-230 September 29, 2008.

**Correction to final regulation:**

The promulgating board name was unintentionally omitted from publication and the list of sections amended and repealed were incorrectly listed. The regulation should appear as follows:

### STATE WATER CONTROL BOARD

#### Final Regulation

**Title of Regulation:** 9VAC25-640-10, 9VAC25-640-20, 9VAC25-640-30, 9VAC25-640-50, 9VAC25-640-70 through 9VAC25-640-120, 9VAC25-640-150 through 9VAC25-640-230, 9VAC25-640-250, Appendices I through IX; repealing 9VAC25-640-130).

VA.R. Doc. No.R07-293

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## General Notices/Errata

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### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**Title of Regulation: 12VAC30-70. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services. Standards for Community Residential Programs.**

**Publication:** 25:3 VA.R. 385-390 October 13, 2008.

**Correction to final regulation:**

The sections amended were incorrectly listed. The sections amended should appear as follows:

(amend 12VAC30-70-70, 12VAC30-70-261, 12VAC30-70-271; repeal 12VAC30-70-500)

VA.R. Doc. No.R09-1360