



Virginia Register of Regulations

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23VAC10-20. General Provisions Applicable to All Taxes Administered by the Department of Taxation (Final).....	2004
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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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.

PUBLICATION SCHEDULE AND DEADLINES

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

February 2009 through November 2009

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
INDEX 1 Volume 25		January 2009
25:11	January 14, 2009	February 2, 2009
25:12	January 28, 2009	February 16, 2009
25:13	February 11, 2009	March 2, 2009
25:14	February 25, 2009	March 16, 2009
INDEX 2 Volume 25		April 2009
25:15	March 11, 2009	March 30, 2009
25:16	March 25, 2009	April 13, 2009
25:17	April 8, 2009	April 27, 2009
25:18	April 22, 2009	May 11, 2009
25:19	May 6, 2009	May 25, 2009
25:20	May 20, 2009	June 8, 2009
INDEX 3 Volume 25		July 2009
25:21	June 3, 2009	June 22, 2009
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
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26:1	August 26, 2009	September 14, 2009
26:2	September 9, 2009	September 28, 2009
26:3	September 23, 2009	October 12, 2009
26:4	October 7, 2009	October 26, 2009
26:5	October 21, 2009	November 9, 2009

*Filing deadlines are Wednesdays unless otherwise specified.

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

The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Fall 2008 VAC Supplement includes final regulations published through *Virginia Register* Volume 24, Issue 24, dated August 4, 2008). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 1. Administration			
1 VAC 17-10-10 through 1 VAC 17-10-90	Repealed	25:8 VA.R. 1484	1/21/09
1 VAC 17-11-10 through 1 VAC 17-11-110	Added	25:8 VA.R. 1484-1487	1/21/09
1 VAC 30-10-10 through 1 VAC 30-10-70	Repealed	25:8 VA.R. 1487	1/21/09
1 VAC 30-11-10 through 1 VAC 30-11-110	Erratum	25:9 VA.R. 1827	--
1 VAC 30-11-10 through 1 VAC 30-11-110	Added	25:8 VA.R. 1488-1490	1/21/09
1 VAC 30-45-10 through 1 VAC 30-45-860	Added	25:7 VA.R. 1409-1413	1/1/09
1 VAC 30-46-10 through 1 VAC 30-46-210	Added	25:7 VA.R. 1413-1417	1/1/09
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
Title 2. Agriculture			
2 VAC 5-10-10 through 2 VAC 5-10-70	Repealed	25:3 VA.R. 342	11/12/08
2 VAC 5-11-10 through 2 VAC 5-11-110	Added	25:3 VA.R. 343-345	11/12/08
2 VAC 5-206-10 through 2 VAC 5-206-50	Added	24:25 VA.R. 3527-3531	10/3/08
2 VAC 5-330-30	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 15-11-10 through 2 VAC 15-11-120	Repealed	25:4 VA.R. 576	11/26/08
2 VAC 15-12-10 through 2 VAC 15-12-110	Added	25:4 VA.R. 577-579	11/26/08
2 VAC 15-20-90	Amended	25:10 VA.R. 1847	2/18/09
2 VAC 15-20-110	Amended	25:10 VA.R. 1848	2/18/09
2 VAC 15-20-120	Amended	25:10 VA.R. 1848	2/18/09
2 VAC 20-10-10 through 2 VAC 20-10-120	Repealed	25:5 VA.R. 792	12/10/08
2 VAC 20-11-10 through 2 VAC 20-11-110	Added	25:5 VA.R. 792-795	12/10/08
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
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
Title 3. Alcoholic Beverages			
3 VAC 5-10	Erratum	25:9 VA.R. 1826	--
3 VAC 5-10-480	Repealed	25:6 VA.R. 1173	12/24/08
3 VAC 5-11-10 through 3 VAC 5-11-110	Added	25:6 VA.R. 1175-1178	12/24/08
Title 4. Conservation and Natural Resources			

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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 5-36-50	Amended	25:6 VA.R. 1178	1/1/09
4 VAC 5-36-60	Amended	25:6 VA.R. 1183	1/1/09
4 VAC 5-36-70	Amended	25:6 VA.R. 1184	1/1/09
4 VAC 5-36-90	Amended	25:6 VA.R. 1185	1/1/09
4 VAC 5-36-100	Amended	25:6 VA.R. 1187	1/1/09
4 VAC 5-36-110	Amended	25:6 VA.R. 1191	1/1/09
4 VAC 5-36-115	Added	25:6 VA.R. 1192	1/1/09
4 VAC 5-36-120	Amended	25:6 VA.R. 1192	1/1/09
4 VAC 5-36-140	Amended	25:6 VA.R. 1193	1/1/09
4 VAC 5-36-150	Amended	25:6 VA.R. 1195	1/1/09
4 VAC 5-36-180	Amended	25:6 VA.R. 1198	1/1/09
4 VAC 5-36-200	Amended	25:6 VA.R. 1199	1/1/09
4 VAC 5-36-210	Amended	25:6 VA.R. 1204	1/1/09
4 VAC 10-10-10 through 4 VAC 10-10-30	Repealed	25:6 VA.R. 1208	12/24/08
4 VAC 10-11-10 through 4 VAC 10-11-110	Added	25:6 VA.R. 1209-1212	12/24/08
4 VAC 15-450-10 through 4 VAC 15-450-40	Added	25:10 VA.R. 1849-1850	1/1/09
4 VAC 20-20-50	Amended	25:6 VA.R. 1212	11/1/08
4 VAC 20-252-90	Amended	25:6 VA.R. 1213	11/1/08
4 VAC 20-252-100	Amended	25:6 VA.R. 1213	11/1/08
4 VAC 20-260-35 emer	Amended	25:3 VA.R. 353	10/1/08-10/31/08
4 VAC 20-260-35	Amended	25:6 VA.R. 1213	11/1/08
4 VAC 20-260-40 emer	Amended	25:3 VA.R. 353	10/1/08-10/31/08
4 VAC 20-260-40	Amended	25:6 VA.R. 1213	11/1/08
4 VAC 20-620-20	Amended	25:3 VA.R. 354	10/1/08
4 VAC 20-620-30	Amended	25:3 VA.R. 354	10/1/08
4 VAC 20-620-40	Amended	25:3 VA.R. 355	10/1/08
4 VAC 20-720-20	Amended	25:3 VA.R. 357	10/1/08
4 VAC 20-720-40	Amended	25:3 VA.R. 359	10/1/08
4 VAC 20-720-50	Amended	25:3 VA.R. 360	10/1/08
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	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 20-751-10 emer	Amended	25:3 VA.R. 362	9/29/08-10/28/08
4 VAC 20-751-15 emer	Amended	25:3 VA.R. 362	9/29/08-10/28/08
4 VAC 20-751-20 emer	Amended	25:3 VA.R. 362	9/29/08-10/28/08
4 VAC 20-751-20	Amended	25:6 VA.R. 1214	10/29/08
4 VAC 20-910-45	Amended	24:25 VA.R. 3537	8/1/08
4 VAC 20-910-45	Amended	25:6 VA.R. 1214	11/1/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-950-47	Amended	25:8 VA.R. 1491	1/1/09
4 VAC 20-950-48	Amended	25:8 VA.R. 1491	1/1/09
4 VAC 20-1040-20	Amended	25:8 VA.R. 1492	11/30/08
4 VAC 20-1040-25	Added	25:8 VA.R. 1493	11/30/08
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 20-1170-10	Added	25:6 VA.R. 1215	12/1/08
4 VAC 20-1170-20	Added	25:6 VA.R. 1215	12/1/08
4 VAC 20-1180-10 through 4 VAC 20-1180-60	Added	25:9 VA.R. 1680-1681	12/22/08
4 VAC 25-10-10 through 4 VAC 25-10-90	Repealed	25:5 VA.R. 795	12/25/08
4 VAC 25-11-10 through 4 VAC 25-11-120	Added	25:5 VA.R. 797-800	12/25/08
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
Title 6. Criminal Justice and Corrections			
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 15-70-10	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 20-10-10 through 6 VAC 20-10-50	Repealed	25:10 VA.R. 1850	2/20/09
6 VAC 20-11-10 through 6 VAC 20-11-110	Added	25:10 VA.R. 1851-1853	2/20/09
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 35-10-10 through 6 VAC 35-10-150	Repealed	24:25 VA.R. 3573	9/17/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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 35-20-37	Amended	25:4 VA.R. 626	12/12/08
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
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
Title 7. Economic Development			
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
Title 8. Education			
8 VAC 35-60-20	Amended	25:5 VA.R. 800	11/10/08
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
Title 9. Environment			
9 VAC 5-5-10 through 9 VAC 5-5-110	Added	25:5 VA.R. 801-804	1/1/09
9 VAC 5-80-5	Added	25:6 VA.R. 1231	12/31/08
9 VAC 5-80-15	Added	25:6 VA.R. 1234	12/31/08
9 VAC 5-80-25	Added	25:6 VA.R. 1234	12/31/08
9 VAC 5-80-35	Added	25:6 VA.R. 1235	12/31/08
9 VAC 5-80-150	Amended	25:6 VA.R. 1237	12/31/08
9 VAC 5-80-230	Amended	25:6 VA.R. 1237	12/31/08
9 VAC 5-80-270	Amended	25:6 VA.R. 1238	12/31/08
9 VAC 5-80-510	Amended	25:6 VA.R. 1239	12/31/08
9 VAC 5-80-590	Amended	25:6 VA.R. 1241	12/31/08
9 VAC 5-80-670	Amended	25:6 VA.R. 1241	12/31/08
9 VAC 5-80-670	Erratum	25:8 VA.R. 1644	--
9 VAC 5-80-860	Amended	25:6 VA.R. 1243	12/31/08
9 VAC 5-80-990	Amended	25:6 VA.R. 1243	12/31/08
9 VAC 5-80-1020	Amended	25:6 VA.R. 1244	12/31/08
9 VAC 5-80-1100	Amended	25:6 VA.R. 1258	12/31/08
9 VAC 5-80-1110	Amended	25:6 VA.R. 1259	12/31/08
9 VAC 5-80-1160	Amended	25:6 VA.R. 1244	12/31/08
9 VAC 5-80-1170	Amended	25:6 VA.R. 1245	12/31/08
9 VAC 5-80-1290	Amended	25:6 VA.R. 1246	12/31/08
9 VAC 5-80-1320	Amended	25:6 VA.R. 1264	12/31/08
9 VAC 5-80-1450	Amended	25:6 VA.R. 1247	12/31/08
9 VAC 5-80-1450	Erratum	25:8 VA.R. 1644	--
9 VAC 5-80-1460	Amended	25:6 VA.R. 1248	12/31/08
9 VAC 5-80-1615	Amended	25:6 VA.R. 1218	12/31/08
9 VAC 5-80-1695	Amended	25:6 VA.R. 1229	12/31/08
9 VAC 5-80-1765	Amended	25:6 VA.R. 1249	12/31/08
9 VAC 5-80-1773	Added	25:6 VA.R. 1251	12/31/08
9 VAC 5-80-1775	Amended	25:6 VA.R. 1251	12/31/08
9 VAC 5-80-1955	Amended	25:6 VA.R. 1253	12/31/08
9 VAC 5-80-2060	Amended	25:6 VA.R. 1254	12/31/08
9 VAC 5-80-2070	Amended	25:6 VA.R. 1255	12/31/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 5-80-2230	Amended	25:6 VA.R. 1256	12/31/08
9 VAC 5-91-20	Amended	25:6 VA.R. 1268	12/31/08
9 VAC 5-140-900	Amended	25:6 VA.R. 1275	12/31/08
9 VAC 5-140-920	Amended	25:6 VA.R. 1275	12/31/08
9 VAC 5-140-930	Amended	25:6 VA.R. 1275	12/31/08
9 VAC 5-151-10	Amended	25:6 VA.R. 1276	12/31/08
9 VAC 5-151-20	Amended	25:6 VA.R. 1278	12/31/08
9 VAC 5-151-40	Amended	25:6 VA.R. 1279	12/31/08
9 VAC 5-151-61	Repealed	25:6 VA.R. 1279	12/31/08
9 VAC 5-151-70	Amended	25:6 VA.R. 1280	12/31/08
9 VAC 5-170-20	Amended	25:5 VA.R. 804	1/1/09
9 VAC 5-170-30	Amended	25:6 VA.R. 1256	12/31/08
9 VAC 5-170-40	Amended	25:5 VA.R. 806	1/1/09
9 VAC 5-170-80	Amended	25:5 VA.R. 807	1/1/09
9 VAC 5-170-90	Repealed	25:5 VA.R. 807	1/1/09
9 VAC 5-170-100	Repealed	25:5 VA.R. 807	1/1/09
9 VAC 5-170-110	Repealed	25:5 VA.R. 809	1/1/09
9 VAC 5-170-180	Amended	25:6 VA.R. 1256	12/31/08
9 VAC 5-170-190	Amended	25:6 VA.R. 1257	12/31/08
9 VAC 5-170-200	Amended	25:6 VA.R. 1257	12/31/08
9 VAC 10-10-10	Repealed	25:4 VA.R. 627	11/26/08
9 VAC 10-10-20	Repealed	25:4 VA.R. 627	11/26/08
9 VAC 10-10-30	Repealed	25:4 VA.R. 627	11/26/08
9 VAC 10-11-10 through 9 VAC 10-11-110	Added	25:4 VA.R. 627-630	11/26/08
9 VAC 15-10-10 through 9 VAC 15-10-40	Repealed	25:5 VA.R. 809	1/1/09
9 VAC 15-11-10 through 9 VAC 15-11-110	Added	25:5 VA.R. 810-813	1/1/09
9 VAC 20-10-10 through 9 VAC 20-10-40	Repealed	25:9 VA.R. 1681	2/4/09
9 VAC 20-11-10 through 9 VAC 20-11-110	Added	25:9 VA.R. 1682-1685	2/4/09
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 25-10-10 through 9 VAC 25-10-40	Repealed	25:5 VA.R. 813	1/1/09
9 VAC 25-11-10 through 9 VAC 25-11-110	Added	25:5 VA.R. 813-816	1/1/09
9 VAC 25-210-10	Amended	25:5 VA.R. 894	12/10/08
9 VAC 25-210-50	Amended	25:5 VA.R. 898	12/10/08
9 VAC 25-210-60	Amended	25:5 VA.R. 898	12/10/08
9 VAC 25-210-130	Erratum	25:9 VA.R. 1826	--
9 VAC 25-210-130	Amended	25:5 VA.R. 902	12/10/08
9 VAC 25-210-220	Amended	25:5 VA.R. 903	12/10/08
9 VAC 25-260-30	Amending	24:26 VA.R. 3747	8/12/08
9 VAC 25-260-30	Amended	25:5 VA.R. 904	10/22/08
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

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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
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 25-740-10 through 9 VAC 25-740-210	Added	24:26 VA.R. 3748-3773	10/1/08
9 VAC 25-790 (Forms)	Added	25:6 VA.R. 1285	--
9 VAC 25-860-10 through 9 VAC 25-860-70	Added	25:6 VA.R. 1285-1295	12/24/08
Title 10. Finance and Financial Institutions			
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
10 VAC 5-200-10	Amended	25:4 VA.R. 637	1/1/09
10 VAC 5-200-20	Amended	25:4 VA.R. 637	1/1/09
10 VAC 5-200-33	Added	25:4 VA.R. 638	1/1/09
10 VAC 5-200-35	Added	25:4 VA.R. 639	1/1/09
10 VAC 5-200-40	Amended	25:4 VA.R. 641	1/1/09
10 VAC 5-200-60	Amended	25:4 VA.R. 642	1/1/09
10 VAC 5-200-70	Amended	25:4 VA.R. 642	1/1/09
10 VAC 5-200-80	Amended	25:4 VA.R. 643	1/1/09
10 VAC 5-200-110	Added	25:4 VA.R. 646	1/1/09
10 VAC 5-200-115	Added	25:4 VA.R. 651	1/1/09
10 VAC 5-200-120	Added	25:4 VA.R. 650	1/1/09
Title 11. Gaming			
11 VAC 10-10-10 through 11 VAC 10-10-70	Repealed	25:5 VA.R. 904	12/10/08
11 VAC 10-11-10 through 11 VAC 10-11-110	Added	25:5 VA.R. 905-907	12/10/08
11 VAC 15-12-10	Repealed	25:4 VA.R. 651	11/26/08
11 VAC 15-12-20	Repealed	25:4 VA.R. 651	11/26/08
11 VAC 15-13-10 through 11 VAC 15-13-110	Added	25:4 VA.R. 652-654	11/26/08
Title 12. Health			
12 VAC 5-10-10 through 12 VAC 5-10-80	Repealed	25:4 VA.R. 654	1/1/09
12 VAC 5-11-10 through 12 VAC 5-11-110	Added	25:4 VA.R. 655-657	1/1/09
12 VAC 5-67-10 emer	Added	25:4 VA.R. 658	11/1/08-10/31/09
12 VAC 5-67-20 emer	Added	25:4 VA.R. 658	11/1/08-10/31/09
12 VAC 5-67-30 emer	Added	25:4 VA.R. 658	11/1/08-10/31/09
12 VAC 5-220-110	Amended	25:1 VA.R. 26	10/15/08
12 VAC 5-220-160	Amended	25:1 VA.R. 25	10/15/08
12 VAC 5-220-200	Amended	25:1 VA.R. 26	10/15/08
12 VAC 5-230-10	Amended	25:9 VA.R. 1707	2/15/09
12 VAC 5-230-20	Repealed	25:9 VA.R. 1711	2/15/09
12 VAC 5-230-30	Amended	25:9 VA.R. 1712	2/15/09
12 VAC 5-230-40 through 12 VAC 5-230-1000	Added	25:9 VA.R. 1713-1742	2/15/09
12 VAC 5-240-10 through 12 VAC 5-240-60	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-250-10 through 12 VAC 5-250-120	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-260-10 through 12 VAC 5-260-130	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-270-10 through 12 VAC 5-270-60	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-280-10 through 12 VAC 5-280-70	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-290-10 through 12 VAC 5-290-70	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-300-10 through 12 VAC 5-300-70	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-310-10 through 12 VAC 5-310-70	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-320-10 through 12 VAC 5-320-480	Repealed	25:9 VA.R. 1706	2/15/09

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12 VAC 5-330-10 through 12 VAC 5-330-70	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-340-10 through 12 VAC 5-340-120	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-350-10 through 12 VAC 5-350-60	Repealed	25:9 VA.R. 1707	2/15/09
12 VAC 5-360-10 through 12 VAC 5-360-70	Repealed	25:9 VA.R. 1707	2/15/09
12 VAC 5-481-10	Amended	25:2 VA.R. 231	11/1/08
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 5-481-480	Amended	25:2 VA.R. 260	11/1/08
12 VAC 5-481-2870	Amended	25:2 VA.R. 267	11/1/08
12 VAC 5-481-3160	Amended	25:2 VA.R. 267	11/1/08
12 VAC 5-481-3710	Amended	25:2 VA.R. 267	11/1/08
12 VAC 5-590-10	Amended	25:5 VA.R. 908	12/10/08
12 VAC 5-590-370	Amended	25:5 VA.R. 916	12/10/08
12 VAC 5-590-410	Amended	25:5 VA.R. 955	12/10/08
12 VAC 5-590-420	Amended	25:5 VA.R. 959	12/10/08
12 VAC 5-590-440	Amended	25:5 VA.R. 994	12/10/08
12 VAC 5-590-500	Amended	25:5 VA.R. 998	12/10/08
12 VAC 5-590-530	Amended	25:5 VA.R. 999	12/10/08
12 VAC 5-590-540	Amended	25:5 VA.R. 1011	12/10/08
12 VAC 5-590-545	Amended	25:5 VA.R. 1016	12/10/08
12 VAC 5-590-550	Amended	25:5 VA.R. 1021	12/10/08
12 VAC 30-5-10 through 12 VAC 30-5-110	Added	25:3 VA.R. 380-383	11/12/08
12 VAC 30-10-815	Added	25:4 VA.R. 662	11/26/08
12 VAC 30-40-290 emer	Amended	25:1 VA.R. 35	8/27/08-8/26/09
12 VAC 30-50-130	Amended	25:5 VA.R. 1041	12/10/08
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 30-50-229.1	Repealed	25:5 VA.R. 1045	12/10/08
12 VAC 30-50-320	Amended	25:8 VA.R. 1515	2/5/09
12 VAC 30-50-330 through 12 VAC 30-50-360	Added	25:8 VA.R. 1515-1520	2/5/09
12 VAC 30-50-491 emer	Added	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-50-530	Amended	25:5 VA.R. 1049	12/10/08
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 30-70-261	Amended	25:3 VA.R. 388	11/27/08
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 30-80-32 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 30-80-190 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

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12 VAC 30-100-170	Amended	24:25 VA.R. 3622	10/2/08
12 VAC 30-120-61 through 12 VAC 30-120-68	Repealed	25:8 VA.R. 1520-1526	2/5/09
12 VAC 30-120-100	Amended	24:26 VA.R. 3781	10/15/08
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 30-135-10	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 30-141-660 emer	Amended	25:10 VA.R. 1854	12/22/08-12/21/09
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
Title 13. Housing			
13 VAC 5-10-10 through 13 VAC 5-10-120	Repealed	25:4 VA.R. 666	11/26/08
13 VAC 5-11-10 through 13 VAC 5-11-110	Added	25:4 VA.R. 667-669	11/26/08
13 VAC 5-51-81	Amended	24:25 VA.R. 3622	10/1/08
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 10-20-40	Amended	25:9 VA.R. 1743	12/15/08
13 VAC 10-180-40	Amended	25:7 VA.R. 1418	1/1/09
13 VAC 10-180-50	Amended	25:7 VA.R. 1419	1/1/09
13 VAC 10-180-60	Amended	25:7 VA.R. 1421	1/1/09
Title 14. Insurance			
14 VAC 5-323-10 through 14 VAC 5-323-70	Added	25:8 VA.R. 1527-1528	1/1/09
14 VAC 5-395-40	Amended	24:26 VA.R. 3811	8/29/08
Title 16. Labor and Employment			
16 VAC 15-10-10 through 16 VAC 15-10-100	Repealed	25:4 VA.R. 672	11/26/08
16 VAC 15-11-10 through 16 VAC 15-11-110	Added	25:4 VA.R. 672-675	11/26/08
16 VAC 15-30-40	Amended	24:25 VA.R. 3632	9/18/08
16 VAC 20-10-10 through 16 VAC 20-10-100	Repealed	25:4 VA.R. 675	11/27/08
16 VAC 20-11-10 through 16 VAC 20-11-110	Added	25:4 VA.R. 676-678	11/27/08
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 25-20-10	Amended	25:8 VA.R. 1529	2/1/09
16 VAC 30-11-10 through 16 VAC 30-11-30	Repealed	25:6 VA.R. 1307	12/24/08
16 VAC 30-12-10 through 16 VAC 30-12-110	Added	25:6 VA.R. 1307-1310	12/24/08
Title 17. Libraries and Cultural Resources			
17 VAC 5-10-10 through 17 VAC 5-10-40	Repealed	25:6 VA.R. 1310	12/24/08
17 VAC 5-11-10 through 17 VAC 5-11-110	Added	25:6 VA.R. 1311-1313	12/24/08
17 VAC 10-10-10 through 17 VAC 10-10-40	Repealed	25:6 VA.R. 1313	12/24/08
17 VAC 10-11-10 through 17 VAC 10-11-110	Added	25:6 VA.R. 1314-1316	12/24/08
17 VAC 15-10-10	Repealed	25:5 VA.R. 1064	12/10/08
17 VAC 15-11-10 through 17 VAC 15-11-110	Added	25:5 VA.R. 1065-1067	12/10/08
17 VAC 15-120-10	Added	25:6 VA.R. 1317	12/24/08
17 VAC 15-120-20	Added	25:6 VA.R. 1317	12/24/08

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17 VAC 15-120-30	Added	25:6 VA.R. 1317	12/24/08
Title 18. Professional and Occupational Licensing			
18 VAC 5-10-10 through 18 VAC 5-10-90	Repealed	25:4 VA.R. 678	11/26/08
18 VAC 5-11-10 through 18 VAC 5-11-110	Added	25:4 VA.R. 679-682	11/26/08
18 VAC 10-10-10 through 18 VAC 10-10-90	Repealed	25:4 VA.R. 682	11/27/08
18 VAC 10-11-10 through 18 VAC 10-11-110	Added	25:4 VA.R. 682-685	11/27/08
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 10-20-120	Amended	25:5 VA.R. 1068	1/1/09
18 VAC 10-20-140	Amended	25:5 VA.R. 1068	1/1/09
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 10-20-310	Erratum	25:7 VA.R. 1451	--
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 25-10-10 through 18 VAC 25-10-90	Repealed	25:6 VA.R. 1318	12/24/08
18 VAC 25-11-10 through 18 VAC 25-11-110	Added	25:6 VA.R. 1319-1321	12/24/08
18 VAC 25-21-20	Amended	25:7 VA.R. 1431	2/1/09
18 VAC 25-21-40	Amended	25:7 VA.R. 1432	2/1/09
18 VAC 25-21-50	Amended	25:7 VA.R. 1432	2/1/09
18 VAC 25-21-60	Amended	25:7 VA.R. 1432	2/1/09
18 VAC 25-21-110	Amended	25:7 VA.R. 1433	2/1/09
18 VAC 25-21-120	Amended	25:7 VA.R. 1433	2/1/09
18 VAC 25-21-150	Amended	25:7 VA.R. 1433	2/1/09
18 VAC 25-21-170	Amended	25:7 VA.R. 1434	2/1/09
18 VAC 25-21-180	Amended	25:7 VA.R. 1434	2/1/09
18 VAC 25-21-185	Added	25:7 VA.R. 1435	2/1/09
18 VAC 30-10-10 through 18 VAC 30-10-120	Repealed	25:5 VA.R. 1070	12/10/08
18 VAC 30-11-10 through 18 VAC 30-11-110	Added	25:5 VA.R. 1070-1073	12/10/08
18 VAC 30-20 (Forms)	Amended	24:26 VA.R. 3814	--
18 VAC 41-10-10 through 18 VAC 41-10-90	Repealed	25:6 VA.R. 1321	12/24/08
18 VAC 41-11-10	Erratum	25:9 VA.R. 1826	--
18 VAC 41-11-20	Erratum	25:9 VA.R. 1826	--
18 VAC 41-11-10 through 18 VAC 41-11-110	Added	25:6 VA.R. 1322-1325	12/24/08
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 47-10-10 through 18 VAC 47-10-90	Repealed	25:6 VA.R. 1325	12/24/08
18 VAC 47-11-10 through 18 VAC 47-11-110	Added	25:6 VA.R. 1325-1328	12/24/08
18 VAC 48-10-10 through 18 VAC 48-10-110	Added	25:3 VA.R. 411-414	11/13/08
18 VAC 48-20-10 through 18 VAC 48-20-730 emer	Added	25:5 VA.R. 1074-1093	11/13/08-11/12/09
18 VAC 48-40-10 through 18 VAC 48-40-110	Added	25:4 VA.R. 685-688	11/27/08
18 VAC 48-50-10 through 18 VAC 48-50-200 emer	Added	25:5 VA.R. 1095-1100	11/13/08-11/12/09

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 48-60-10 through 18 VAC 48-60-60	Added	25:4 VA.R. 688-689	11/27/08
18 VAC 50-10-10 through 18 VAC 50-10-90	Repealed	25:6 VA.R. 1328	12/24/08
18 VAC 50-11-10 through 18 VAC 50-11-110	Added	25:6 VA.R. 1328-1331	12/24/08
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 62-10-10 through 18 VAC 62-10-110	Added	25:6 VA.R. 1332-1334	12/24/08
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
18 VAC 65-20 (Forms)	Amended	24:26 VA.R. 3818	--
18 VAC 65-40 (Forms)	Amended	24:26 VA.R. 3818	--
18 VAC 70-10-10 through 18 VAC 70-10-90	Repealed	25:5 VA.R. 1100	12/10/08
18 VAC 70-11-10 through 18 VAC 70-11-110	Added	25:5 VA.R. 1100-1103	12/10/08
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 80-10-10 through 18 VAC 80-10-90	Repealed	25:6 VA.R. 1334	12/24/08
18 VAC 80-11-10 through 18 VAC 80-11-110	Added	25:6 VA.R. 1335-1338	12/24/08
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 85-40 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-50 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-80 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-80-10 emer	Amended	25:5 VA.R. 1104	11/1/08-10/31/09
18 VAC 85-80-26 emer	Amended	25:5 VA.R. 1104	11/1/08-10/31/09
18 VAC 85-80-40 emer	Amended	25:5 VA.R. 1104	11/1/08-10/31/09
18 VAC 85-80-45 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-50 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-61 emer	Repealed	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-65 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-70 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-72 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-73 emer	Amended	25:5 VA.R. 1106	11/1/08-10/31/09
18 VAC 85-80-80 emer	Amended	25:5 VA.R. 1106	11/1/08-10/31/09
18 VAC 85-80-90 emer	Amended	25:5 VA.R. 1106	11/1/08-10/31/09
18 VAC 85-80-100 emer	Amended	25:5 VA.R. 1107	11/1/08-10/31/09
18 VAC 85-80-110 emer	Amended	25:5 VA.R. 1107	11/1/08-10/31/09
18 VAC 85-80-111 emer	Added	25:5 VA.R. 1108	11/1/08-10/31/09
18 VAC 85-101 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-110 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-120 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-130 (Forms)	Amended	24:26 VA.R. 3823	--

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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 90-25 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-30 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-30-10	Amended	25:5 VA.R. 1111	12/25/08
18 VAC 90-30-20	Amended	25:5 VA.R. 1112	12/25/08
18 VAC 90-30-30	Amended	25:5 VA.R. 1112	12/25/08
18 VAC 90-30-80	Amended	25:5 VA.R. 1112	12/25/08
18 VAC 90-30-85	Amended	25:5 VA.R. 1112	12/25/08
18 VAC 90-30-100	Amended	25:5 VA.R. 1113	12/25/08
18 VAC 90-30-105	Amended	25:5 VA.R. 1113	12/25/08
18 VAC 90-30-110	Amended	25:5 VA.R. 1113	12/25/08
18 VAC 90-30-120	Amended	25:5 VA.R. 1114	12/25/08
18 VAC 90-30-121	Amended	25:5 VA.R. 1114	12/25/08
18 VAC 90-30-220	Amended	25:5 VA.R. 1115	12/25/08
18 VAC 90-30-230	Amended	25:5 VA.R. 1115	12/25/08
18 VAC 90-40 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-40-10	Amended	25:5 VA.R. 1115	12/25/08
18 VAC 90-40-20	Amended	25:5 VA.R. 1116	12/25/08
18 VAC 90-40-40	Amended	25:5 VA.R. 1116	12/25/08
18 VAC 90-40-50	Amended	25:5 VA.R. 1116	12/25/08
18 VAC 90-40-55	Amended	25:5 VA.R. 1116	12/25/08
18 VAC 90-40-60	Amended	25:5 VA.R. 1117	12/25/08
18 VAC 90-40-90	Amended	25:5 VA.R. 1117	12/25/08
18 VAC 90-40-100	Amended	25:5 VA.R. 1117	12/25/08
18 VAC 90-40-121	Added	25:5 VA.R. 1118	12/25/08
18 VAC 90-40-130	Amended	25:5 VA.R. 1118	12/25/08
18 VAC 90-40-140	Amended	25:5 VA.R. 1118	12/25/08
18 VAC 90-50 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-50-10	Amended	25:4 VA.R. 691	12/11/08
18 VAC 90-50-40	Amended	25:4 VA.R. 691	12/11/08
18 VAC 90-50-75	Amended	25:4 VA.R. 691	12/11/08
18 VAC 90-50-80	Amended	25:4 VA.R. 692	12/11/08
18 VAC 90-50-90	Amended	25:4 VA.R. 692	12/11/08
18 VAC 90-60 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 95-10-10 through 18 VAC 95-10-120	Repealed	25:6 VA.R. 1338	12/24/08
18 VAC 95-11-10 through 18 VAC 95-11-110	Added	25:6 VA.R. 1338-1341	12/24/08
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 95-20-225	Amended	25:6 VA.R. 1341	12/24/08
18 VAC 95-30 (Forms)	Amended	24:26 VA.R. 3827	--
18 VAC 100-10-10 through 18 VAC 100-10-90	Repealed	25:6 VA.R. 1342	12/24/08
18 VAC 100-11-10 through 18 VAC 100-11-110	Added	25:6 VA.R. 1342-1345	12/24/08
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 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 110-20-20 emer	Amended	25:3 VA.R. 464	9/23/08-9/22/09

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 110-20-220	Amended	25:4 VA.R. 694	12/11/08
18 VAC 110-20-230	Repealed	25:4 VA.R. 695	12/11/08
18 VAC 110-30 (Forms)	Amended	24:25 VA.R. 3640	--
18 VAC 110-50 (Forms)	Amended	24:25 VA.R. 3640	--
18 VAC 110-50-20 emer	Amended	25:3 VA.R. 466	9/23/08-9/22/09
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 115-30 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-40 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-50 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-60 (Forms)	Amended	25:1 VA.R. 65	--
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 125-10-10 through 18 VAC 125-10-120	Repealed	25:4 VA.R. 699	11/26/08
18 VAC 125-11-10 through 18 VAC 125-11-110	Added	25:4 VA.R. 699-702	11/26/08
18 VAC 125-20 (Forms)	Amended	25:1 VA.R. 66	--
18 VAC 125-30 (Forms)	Amended	25:1 VA.R. 66	--
18 VAC 130-10-10 through 18 VAC 130-10-90	Repealed	25:6 VA.R. 1345	12/24/08
18 VAC 130-11-10 through 18 VAC 130-11-110	Added	25:6 VA.R. 1345-1348	12/24/08
18 VAC 135-10-10 through 18 VAC 135-10-90	Repealed	25:6 VA.R. 1348	12/24/08
18 VAC 135-11-10 through 18 VAC 135-11-110	Added	25:6 VA.R. 1348-1351	12/24/08
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	--
18 VAC 140-20-10	Amended	25:4 VA.R. 703	11/26/08
18 VAC 140-20-40	Amended	25:4 VA.R. 703	11/26/08
18 VAC 140-20-50	Amended	25:4 VA.R. 703	11/26/08
18 VAC 140-20-51	Added	25:4 VA.R. 705	11/26/08
18 VAC 140-20-60	Amended	25:4 VA.R. 705	11/26/08
18 VAC 140-20-105	Amended	25:4 VA.R. 706	11/26/08
18 VAC 140-20-140	Repealed	25:4 VA.R. 707	11/26/08
18 VAC 140-20-150	Amended	25:4 VA.R. 707	11/26/08
18 VAC 140-20-160	Amended	25:4 VA.R. 709	11/26/08
18 VAC 145-10-10 through 18 VAC 145-10-90	Repealed	25:6 VA.R. 1351	12/24/08
18 VAC 145-11-10 through 18 VAC 145-11-110	Added	25:6 VA.R. 1352-1355	12/24/08
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 155-10-5 through 18 VAC 155-10-80	Repealed	25:6 VA.R. 1355	12/24/08
18 VAC 155-11-10 through 18 VAC 155-11-110	Added	25:6 VA.R. 1355-1358	12/24/08
18 VAC 160-10-10 through 18 VAC 160-10-90	Repealed	25:4 VA.R. 709	11/26/08
18 VAC 160-11-10 through 18 VAC 160-11-110	Added	25:4 VA.R. 709-712	11/26/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 19. Public Safety			
19 VAC 15-10-10 through 19 VAC 15-10-50	Repealed	25:5 VA.R. 1118	12/10/08
19 VAC 15-11-10 through 19 VAC 15-11-110	Added	25:5 VA.R. 1119-1121	12/10/08
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
Title 20. Public Utilities and Telecommunications			
20 VAC 5-200-30	Repealed	25:9 VA.R. 1768	1/1/09
20 VAC 5-201-10 through 20 VAC 5-201-110	Added	25:9 VA.R. 1768-1816	1/1/09
20 VAC 5-302-10 through 20 VAC 5-302-35	Amended	25:10 VA.R. 1859-1863	1/15/09
20 VAC 5-312-10	Amended	25:8 VA.R. 1534	1/1/09
20 VAC 5-312-20	Amended	25:8 VA.R. 1535	1/1/09
20 VAC 5-312-60	Amended	25:8 VA.R. 1537	1/1/09
20 VAC 5-312-80	Amended	25:8 VA.R. 1538	1/1/09
20 VAC 5-312-90	Amended	25:8 VA.R. 1540	1/1/09
20 VAC 5-312-120	Repealed	25:8 VA.R. 1542	1/1/09
20 VAC 5-313-10	Amended	25:8 VA.R. 1543	1/1/09
20 VAC 5-313-20	Amended	25:8 VA.R. 1543	1/1/09
20 VAC 5-313-30	Repealed	25:8 VA.R. 1544	1/1/09
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
20 VAC 5-403-70	Amended	25:9 VA.R. 1816	1/1/09
20 VAC 5-414-10 through 20 VAC 5-414-70	Added	25:7 VA.R. 1437-1438	12/1/08
Title 22. Social Services			
22 VAC 5-10-10 through 22 VAC 5-10-110	Repealed	25:5 VA.R. 1122	1/1/09
22 VAC 5-11-10 through 22 VAC 5-11-110	Added	25:5 VA.R. 1122-1125	1/1/09
22 VAC 5-30-10 through 22 VAC 5-30-60	Added	24:25 VA.R. 3665-3669	1/1/09
22 VAC 15-10-10 through 22 VAC 15-10-70	Repealed	25:4 VA.R. 712	1/1/09
22 VAC 15-11-10 through 22 VAC 15-11-110	Added	25:4 VA.R. 713-715	1/1/09
22 VAC 20-10-10 through 22 VAC 20-10-100	Repealed	25:7 VA.R. 1438	1/7/09
22 VAC 20-11-10 through 22 VAC 20-11-110	Added	25:7 VA.R. 1439-1441	1/7/09
22 VAC 27-10-10 through 22 VAC 27-10-110	Added	25:7 VA.R. 1442-1445	1/7/09
22 VAC 30-10-10	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-20	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-40	Repealed	25:1 VA.R. 71	10/15/08
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 40-72-10	Amended	25:8 VA.R. 1592	2/5/09
22 VAC 40-72-30	Repealed	25:8 VA.R. 1598	2/5/09
22 VAC 40-72-50	Amended	25:8 VA.R. 1598	2/5/09
22 VAC 40-72-90	Amended	25:8 VA.R. 1599	2/5/09
22 VAC 40-72-100	Amended	25:8 VA.R. 1600	2/5/09
22 VAC 40-72-150	Amended	25:8 VA.R. 1600	2/5/09
22 VAC 40-72-190	Repealed	25:8 VA.R. 1600	2/5/09
22 VAC 40-72-191	Added	25:8 VA.R. 1601	2/5/09
22 VAC 40-72-200	Repealed	25:8 VA.R. 1601	2/5/09
22 VAC 40-72-201	Added	25:8 VA.R. 1602	2/5/09

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 40-72-210	Amended	25:8 VA.R. 1603	2/5/09
22 VAC 40-72-220	Amended	25:8 VA.R. 1603	2/5/09
22 VAC 40-72-230	Amended	25:8 VA.R. 1605	2/5/09
22 VAC 40-72-260	Amended	25:8 VA.R. 1606	2/5/09
22 VAC 40-72-290	Amended	25:8 VA.R. 1606	2/5/09
22 VAC 40-72-340	Amended	25:8 VA.R. 1607	2/5/09
22 VAC 40-72-390	Amended	25:8 VA.R. 1609	2/5/09
22 VAC 40-72-420	Amended	25:8 VA.R. 1610	2/5/09
22 VAC 40-72-430	Amended	25:8 VA.R. 1610	2/5/09
22 VAC 40-72-440	Amended	25:8 VA.R. 1611	2/5/09
22 VAC 40-72-630	Amended	25:8 VA.R. 1612	2/5/09
22 VAC 40-72-660	Amended	25:8 VA.R. 1613	2/5/09
22 VAC 40-72-670	Amended	25:8 VA.R. 1613	2/5/09
22 VAC 40-72-910	Amended	25:8 VA.R. 1615	2/5/09
22 VAC 40-72-920	Amended	25:8 VA.R. 1615	2/5/09
22 VAC 40-72-930	Amended	25:8 VA.R. 1615	2/5/09
22 VAC 40-72-950	Amended	25:8 VA.R. 1616	2/5/09
22 VAC 40-72-960	Amended	25:8 VA.R. 1616	2/5/09
22 VAC 40-72-970	Amended	25:8 VA.R. 1617	2/5/09
22 VAC 40-72-1010	Amended	25:8 VA.R. 1617	2/5/09
22 VAC 40-72-1120	Amended	25:8 VA.R. 1618	2/5/09
22 VAC 40-151-10 through 22 VAC 40-151-1020	Added	25:3 VA.R. 482-512	1/1/09
22 VAC 45-11-10 through 22 VAC 45-11-90	Repealed	25:5 VA.R. 1125	12/1/08
22 VAC 45-12-10 through 22 VAC 45-12-110	Added	25:5 VA.R. 1125-1128	12/1/08
Title 23. Taxation			
23 VAC 10-10-10 through 23 VAC 10-10-80	Repealed	25:4 VA.R. 730	1/10/09***
23 VAC 10-11-10 through 23 VAC 10-11-110	Added	25:4 VA.R. 732-735	1/10/09***
23 VAC 10-20-155	Added	24:26 VA.R. 3848	10/1/08
23 VAC 10-20 (Forms)	Amended	25:5 VA.R. 1128	--
23 VAC 10-20-160	Amended	25:8 VA.R. 1620	3/8/09
23 VAC 10-20-165	Added	25:8 VA.R. 1622	3/8/09
23 VAC 10-20-170	Repealed	25:8 VA.R. 1627	3/8/09
23 VAC 10-20-180	Amended	25:8 VA.R. 1628	3/8/09
23 VAC 10-20-190	Amended	25:8 VA.R. 1628	3/8/09
23 VAC 10-55 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-60 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-65 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-75 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-210 (Forms)	Amended	25:6 VA.R. 1358	--
23 VAC 10-210-20	Repealed	24:26 VA.R. 3849	10/1/08
23 VAC 10-210-170	Repealed	25:4 VA.R. 736	11/26/08
23 VAC 10-210-595	Added	25:4 VA.R. 736	11/26/08
23 VAC 10-210-870	Repealed	25:4 VA.R. 736	11/26/08
23 VAC 10-210-4010	Repealed	25:4 VA.R. 736	11/26/08
23 VAC 10-210-6060	Amended	25:8 VA.R. 1632	3/8/09
23 VAC 10-220 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-230 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-230-20	Amended	25:8 VA.R. 1633	3/8/09
23 VAC 10-230-30	Amended	25:8 VA.R. 1633	3/8/09

*** See erratum (25:6 VA.R. 1375) for effective date

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
23 VAC 10-230-40	Amended	25:8 VA.R. 1635	3/8/09
23 VAC 10-230-70	Added	25:8 VA.R. 1637	3/8/09
23 VAC 10-230-75	Added	25:8 VA.R. 1637	3/8/09
23 VAC 10-230-80	Amended	25:8 VA.R. 1637	3/8/09
23 VAC 10-230-90	Amended	25:8 VA.R. 1638	3/8/09
23 VAC 10-230-110	Amended	25:8 VA.R. 1639	3/8/09
23 VAC 10-230-120	Amended	25:8 VA.R. 1639	3/8/09
23 VAC 10-240 (Forms)	Amended	25:6 VA.R. 1359	--
23 VAC 10-300 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-310 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-330 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-350 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-370 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-390 (Forms)	Amended	25:5 VA.R. 1130	--
Title 24. Transportation and Motor Vehicles			
24 VAC 20-10-10 through 24 VAC 20-10-140	Repealed	25:6 VA.R. 1360	12/24/08
24 VAC 20-11-10 through 24 VAC 20-11-110	Added	25:6 VA.R. 1361-1364	12/24/08
24 VAC 22-10-10 through 24 VAC 22-10-140	Repealed	25:4 VA.R. 752	11/26/08
24 VAC 22-11-10 through 24 VAC 22-11-110	Added	25:4 VA.R. 753-755	11/26/08
24 VAC 25-5-10 through 24 VAC 25-5-110	Added	25:7 VA.R. 1445-1448	1/7/09
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 27-10-10 through 24 VAC 27-10-120	Repealed	25:6 VA.R. 1364	12/24/08
24 VAC 27-11-10 through 24 VAC 27-11-110	Added	25:6 VA.R. 1364-1367	12/24/08
24 VAC 27-30-10 through 24 VAC 27-30-190	Added	25:1 VA.R. 78-89	10/15/08
24 VAC 30-10-10 through 24 VAC 30-10-70	Repealed	25:6 VA.R. 1367	12/24/08
24 VAC 30-11-10 through 24 VAC 30-11-110	Added	25:6 VA.R. 1367-1370	12/24/08
24 VAC 30-15-10	Repealed	25:10 VA.R. 1863	2/18/09
24 VAC 30-16-10	Repealed	25:3 VA.R. 520	11/12/08
24 VAC 30-380-10	Amended	25:5 VA.R. 1130	10/22/08
24 VAC 35-10-10 through 24 VAC 35-10-70	Repealed	25:5 VA.R. 1131	12/10/08
24 VAC 35-11-10 through 24 VAC 35-11-110	Added	25:5 VA.R. 1132-1134	12/10/08

NOTICES OF INTENDED REGULATORY ACTION

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider amending the following regulations: **3VAC5-50, Retail Operations**. The purpose of the proposed action is to adopt a definition of the term "dessert wines" as used in subdivision A 12 of § 4.1-210 of the Code of Virginia. A 2008 act of the General Assembly allows the holders of limited mixed beverage restaurant licenses to sell and serve "dessert wines" as defined by board regulation.

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

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

Public Comments: Public comments may be submitted until 5 p.m. on March 4, 2009.

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

VA.R. Doc. No. R09-1605; Filed January 13, 2009, 10:05 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 Alcoholic Beverage Control Board intends to consider amending the following regulations: **3VAC5-70, Other Provisions**. The purpose of the proposed action is to carry out the mandate of Chapter 513 of the 2008 Acts of Assembly, which amends § 4.1-227 of the Code of Virginia and requires the Alcoholic Beverage Control Board to promulgate a regulation providing for a reduction in penalty in certain disciplinary actions against licensees where the licensee can demonstrate that it has provided certified alcohol server training to its employees.

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

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

Public Comments: Public comments may be submitted until 5 p.m. on March 4, 2009.

Agency Contact: Jeffrey L. Painter, Chief Administrative Officer, 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.

VA.R. Doc. No. R09-1678; Filed January 8, 2009, 4:41 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

DEPARTMENT OF CORRECTIONS

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 Corrections intends to consider amending the following regulations: **6VAC15-40, Minimum Standards for Jails and Lockups**. The purpose of the proposed action is to review and update the regulation, as necessary, to address operational and supervision issues related to inmate access to physical activities, medical copayments, staff training, and frequency of inspections. Additional amendments may include document organization as it applies to audit and compliance documentation.

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

Statutory Authority: §§ 53.1-5; 53.1-68, and 53.1-131 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on March 4, 2009.

Agency Contact: William Wilson, Compliance and Accreditation Unit, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-3499, FAX (804) 674-3587, or email william.t.wilson@vadoc.virginia.gov.

VA.R. Doc. No. R09-1738; Filed January 13, 2009, 2:55 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

REGISTRAR'S NOTICE: The Board of Agriculture and Consumer Services 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 Board of Agriculture and Consumer Services will receive, consider and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Final Regulation

Title of Regulation: **2VAC5-60. Rules and Regulations Governing the Operation of Livestock Markets (amending 2VAC5-60-10).**

Statutory Authority: §§ 3.2-6001, 3.2-6002, and 3.2-6004 of the Code of Virginia.

Effective Date: March 4, 2009.

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.

Summary:

The amendments update citations to reflect the recodification of Title 3.1 to Title 3.2 of the Code of Virginia, which became effective October 1, 2008.

2VAC5-60-10. Definitions.

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

"Animal waste" means livestock or poultry excreta and associated feed losses, bedding, litter or other materials.

"Brucellosis" means a disease of cattle, goats, and swine caused by the bacterium *Brucella*.

"Cull pigs" means those swine offered for sale that do not pass veterinary health inspection.

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

"Feeder or breeder swine" means all swine except slaughter swine.

"Interstate health certificate" means a legible record covering the requirements for the importation of animals into the Commonwealth of Virginia, executed on an approved form of the state of origin and bearing the endorsement of the livestock health official of that state.

"Livestock" means farm animals kept for use and profit such as cattle, sheep, swine, goats, and horses.

"Livestock inspector" means an employee of the State Veterinarian who is assigned to each livestock market for the purpose of carrying out the orders of the State Veterinarian.

"Livestock market" means any premise where animals are habitually assembled for sale or exchange as outlined in § ~~3-1-737~~ 3.2-6012 of the Code of Virginia.

"Official brucellosis test" means a blood serum test for brucellosis, commonly called the card test.

"Reactors" means those animals which react positive to the official test for brucellosis.

"Slaughter swine" means those swine offered for sale, sold or exchanged for immediate slaughter, which are shipped without diversion to a state or federally inspected slaughtering establishment for immediate slaughter.

"State Veterinarian" means a Virginia Department of Agriculture and Consumer Services veterinarian employed by the Commissioner of Agriculture and Consumer Services who is responsible for the animal health programs in the Commonwealth of Virginia.

"State waters" means all waters of any river, creek, branch, lake, reservoir, pond, bay, roadstead, estuary, inlet, spring, well; and bodies of surface or underground water, natural or artificial, wholly or partially within or bordering the Commonwealth or within its jurisdiction.

VA.R. Doc. No. R09-1695; Filed January 13, 2009, 11:20 a.m.

Final Regulation

Title of Regulation: **2VAC5-190. Rules and Regulations Establishing a Monitoring Program for Avian Influenza and other Poultry Diseases (amending 2VAC5-190-30).**

Statutory Authority: §§ 3.2-6001 and 3.2-6002 of the Code of Virginia.

Effective Date: March 4, 2009.

Regulations

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.

Summary:

The amendments update citations to reflect the recodification of Title 3.1 to Title 3.2 of the Code of Virginia, which became effective October 1, 2008.

2VAC5-190-30. Specimen submissions.

A. All growers of poultry shall submit to a state laboratory for diagnostic testing specimens from poultry they grow, as specified in subsection C of this section.

B. All persons operating slaughtering plants, egg plants, hatcheries, layer houses, or any other poultry-raising, poultry-keeping or poultry-handling endeavor also shall submit such specimens from poultry they grow, handle, or process, as specified in subsection C of this section.

C. Specimens from poultry submitted pursuant to subsections A and B of this section for laboratory analysis shall be for diseases governed by § ~~3.1-726~~ 3.2-6002 of the Code of Virginia in the number and kind and at a time designated by the State Veterinarian.

D. Specimens submitted in accordance with subsection C of this section shall be from the following classes of poultry.

1. Chickens
 - a. Slaughter birds
 - b. Broiler breeders
 - c. Layers
 - d. Layer breeders
 - e. Broilers
 - f. Pullets
 - g. Cockerels
2. Turkeys
 - a. Slaughter birds
 - b. Turkey breeders
 - c. Commercial toms and hens
 - d. Poult
3. Game birds
 - a. Bobwhite quail
 - b. Chukar partridge
 - c. Pheasant

d. Others

E. Specimens that are required for laboratory testing to detect infectious and contagious diseases shall be submitted as directed by the State Veterinarian from the following:

1. Exhibition birds;
2. Birds from small privately owned layer flocks;
3. Birds on game farms; and
4. Birds in backyard flocks.

F. Disposition of poultry that have recovered from infectious or contagious diseases. Nothing in this chapter shall prohibit the marketing of poultry that have recovered from avian influenza, but the marketing of such recovered poultry shall occur only with the prior approval of the State Veterinarian.

VA.R. Doc. No. R09-1696; Filed January 13, 2009, 11:21 a.m.

Final Regulation

Title of Regulation: **2VAC5-205. Rules and Regulations Pertaining to Shooting Enclosures (amending 2VAC5-205-20).**

Statutory Authority: § 3.2-6039 of the Code of Virginia.

Effective Date: March 4, 2009.

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.

Summary:

The amendments update citations to reflect the recodification of Title 3.1 to Title 3.2 of the Code of Virginia, which became effective October 1, 2008.

2VAC5-205-20. General provisions.

A. Persons holding animals listed in subsection G of this section in Virginia for the purpose of recreational shooting must make application for and obtain an annual shooting enclosure license from the Virginia Department of Agriculture and Consumer Services (VDACS). A topographic map showing the boundaries of the fenced shooting enclosure and a contingency plan that they are capable of executing, specifying how they will eradicate and control any disease outbreak or recover escaped animals must accompany the application for a license.

B. Applicants must state on the application that the shooting enclosure complies with all county and city ordinances and statutes.

C. No license shall be issued without prior inspection and approval from a representative of VDACS. The applicant must contact the regional veterinary supervisor in the

respective region to schedule an appointment for the inspection.

D. A one-time application fee plus an annual license fee as set forth in § ~~3.1-763.5-4~~ 3.2-6038 of the Code of Virginia will be required of each licensee.

E. Operators of a shooting enclosure shall be liable for all costs incurred by any person, city, county, the Commonwealth of Virginia or federal government, resulting from escape of animals or disease eradication or control efforts resulting from animals confined to or escaped from the shooting enclosure.

F. Operators of shooting enclosures must notify VDACS Regional Veterinary Supervisor within 24 hours of first discovering a diseased, dead, or escaped animal; and the carcass must be submitted to the nearest VDACS regional laboratory for necropsy.

G. Animals allowed under a shooting enclosure permit are restricted to the following:

1. Goats: Ibex (*Capra ibex*), Iranian Ibex (*C. hircus*), Angora (*C. hircus*);
2. Sheep: Four-horned or Jacob's (*Ovis aries*), Black Hawaiian (*O. musimon*), Corsican (*O. corsican*), Merino (*O. aries*), Mouflon (*O. musimon*); and
3. Swine: Swine (*Sus scrofa*).

H. A shooting enclosure shall have a minimum of 100 adjoining acres. The applicant shall own or have the area under written lease. Shooting enclosures not contiguous with each other shall be operated under separate licenses.

VA.R. Doc. No. R09-1698; Filed January 13, 2009, 11:21 a.m.

Final Regulation

Title of Regulation: 2VAC5-210. Rules and Regulations Pertaining to Meat and Poultry Inspection Under the Virginia Meat and Poultry Products Inspection Act (amending 2VAC5-210-20).

Statutory Authority: § 3.2-5406 of the Code of Virginia.

Effective Date: March 4, 2009.

Agency Contact: Richard C. Hackenbracht, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-4569, FAX (804) 786-1003, TTY (800) 828-1120, or email richard.hackenbracht@vdacs.virginia.gov.

Summary:

The amendments update citations to reflect the recodification of Title 3.1 to Title 3.2 of the Code of Virginia, which became effective October 1, 2008.

2VAC5-210-20. Definitions.

The following words and terms when used in this part shall have the following meanings unless the context clearly indicates otherwise:

"Act" means the Virginia Meat and Poultry Products Inspection Act (§ ~~3.1-884.17~~ 3.2-5400 et seq. of the Code of Virginia).

"Administrator" means the Director of the Division of Animal and Food Industry Services, or any other officer or employee of the department to whom authority has heretofore been delegated or may hereafter be delegated to act in his stead.

"Commerce" means commerce within the Commonwealth of Virginia.

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

"Federal" means "Virginia."

"Federally inspected and passed" means Virginia inspected and passed.

"Interstate" means intrastate.

"Program" means the Office of Meat and Poultry Services, Virginia Department of Agriculture and Consumer Services.

"Secretary" means the Commissioner of Agriculture and Consumer Services.

"Food Safety Inspection Service" means the Virginia meat and poultry inspection program.

"United States" or "U.S." means "Virginia."

"U.S. Brands and Legends" means "Virginia Brands and Legends."

VA.R. Doc. No. R09-1699; Filed January 13, 2009, 11:21 a.m.

Final Regulation

Title of Regulation: 2VAC5-230. Rules and Regulations Applicable to Controlled Atmosphere (CA) Apples (amending 2VAC5-230-30, 2VAC5-230-50, 2VAC5-230-60).

Statutory Authority: §§ 3.2-4601 and 3.2-4605 of the Code of Virginia.

Effective Date: March 4, 2009.

Agency Contact: Thomas H. Smith, Agriculture and Consumer Services Supervisor, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3548, FAX (804) 371-7785, TTY (800) 828-1120, or email thomas.smith@vdacs.virginia.gov.

Regulations

Summary:

The amendments update citations to reflect the recodification of Title 3.1 to Title 3.2 of the Code of Virginia, which became effective October 1, 2008.

2VAC5-230-30. Requirements for selling (CA) apples.

Any person selling (or placing in transit for first shipment or delivery) any apples identified as being from controlled atmosphere shall provide an invoice which shows the assigned identification number and the original certificate number, as required by § ~~3-1-993~~ 3.2-4608 of the Code of Virginia. Enforcement officials may investigate and examine records and invoices relating to any transactions in connection with this chapter in order to confirm that apples have met these requirements.

2VAC5-230-50. CA registration by other states.

Any person who owns or operates a controlled atmosphere room, or storage building, or who engages in the business of packing or repacking apples which have been held in controlled atmosphere storage where business is local or outside Virginia and who intends to, or does, market in the Commonwealth of Virginia apples so treated and represented as having been exposed to "controlled atmosphere" storage shall register with the commissioner in the same manner as any person within this Commonwealth. Provided, however, that where such person has registered with the proper authorities in the state of origin and has been assigned a comparable registration number or CA identification number under the authority of laws or regulations of such state, he may use that registration if that state has laws or regulations comparable to the CA provisions of § ~~3-1-995~~ 3.2-4603 of the Code of Virginia and this chapter.

2VAC5-230-60. Inspection and certification fees.

The authority of the board contained in § ~~3-1-1004~~ 3.2-4605 of the Code of Virginia to prescribe fees for the inspection and certification of CA apples is delegated to the commissioner.

VA.R. Doc. No. R09-1700; Filed January 13, 2009, 11:21 a.m.

Final Regulation

Title of Regulation: 2VAC5-320. Regulations for the Enforcement of the Endangered Plant and Insect Species Act (amending 2VAC5-320-10).

Statutory Authority: §§ 3.2-1002 and 3.2-1005 of the Code of Virginia.

Effective Date: March 4, 2009.

Agency Contact: Frank Fulgham, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, FAX (804) 371-7793, TTY (800) 828-1120, or email frank.fulgham@vdacs.virginia.gov.

Summary:

The amendments update citations to reflect the recodification of Title 3.1 to Title 3.2 of the Code of Virginia, which became effective October 1, 2008.

2VAC5-320-10. Listing of endangered and threatened plant and insect species.

A. The Board of Agriculture and Consumer Services hereby adopts the following regulation in order to protect designated plant and insect species that exist in this Commonwealth. All designated species are subject to all sections of the Virginia Endangered Plant and Insect Species Act (§§ ~~3-1-1020~~ 3.2-1000 through ~~3-1-1030~~ 3.2-1011 of the Code of Virginia).

B. The following plant and insect species are hereby declared an endangered species:

1. Cardamine micranthera, small-anthered bittercress.
2. Carex juniperorum, juniper sedge.
3. Corallorhiza bentley, Bentley's coralroot.
4. Fimbristylis perpusilla, Harper's fimbriistylis.
5. Helenium virginicum, Virginia sneezeweed.
6. Helonias bullata, swamp-pink.
7. Ilex collina, long-stalked holly.
8. Iliamna corei, Peter's mountain mallow.
9. Isotria medeoloides, small whorled pogonia.
10. Neonympha mitchellii, Mitchell's satyr butterfly.
11. Nestronia umbellula, nestronia.
12. Ptilimnium nodosum, harperella.
13. Puto kosztarabi, Buffalo Mountain mealybug.
14. Pseudanophthalmus holsingeri, Holsinger's cave beetle.
15. Scirpus ancistrochaetus, Northeastern bulrush.
16. Sigara depressa, Virginia Piedmont water boatman.
17. Spiraea virginiana, Virginia spiraea.
18. Trifolium calcaricum, running glade clover.

C. The following plant and insect species are hereby declared a threatened species:

1. Aeschynomene virginica, sensitive-joint vetch.
2. Amaranthus pumilus, seabeach amaranth.
3. Arabis serotina, shale barren rock cress.
4. Cicindela dorsalis dorsalis, Northeastern beach tiger beetle.
5. Echinacea laevigata, smooth coneflower.

6. *Juncus caesariensis*, New Jersey rush.
7. *Lycopodiella margueritiae*, Northern prostrate clubmoss.
8. *Nuphar sagittifolia*, narrow-leaved spatterdock.
9. *Platanthera leucophaea*, Eastern prairie fringed orchid.
10. *Pyrgus wyandot*, Appalachian grizzled skipper.
11. *Rhus michauxii*, Michaux's sumac.
12. *Scirpus flaccidifolius*, reclining bulrush.

VA.R. Doc. No. R09-1702; Filed January 13, 2009, 11:22 a.m.

Final Regulation

Title of Regulation: 2VAC5-325. Regulations Governing Pine Shoot Beetle (amending 2VAC5-325-10).

Statutory Authority: § 3.2-109 of the Code of Virginia.

Effective Date: March 4, 2009.

Agency Contact: Larry Nichols, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-3515, FAX (804) 371-7793, or email larry.nichols@vdacs.virginia.gov.

Summary:

The amendments update citations to reflect the recodification of Title 3.1 to Title 3.2 of the Code of Virginia, which became effective October 1, 2008.

2VAC5-325-10. Definitions.

The following words and terms shall have the following meanings unless the context clearly indicates otherwise:

"Certificate" means a document in which an inspector affirms that a specified regulated article is free of pine shoot beetle and may be moved to any destination outside the area under quarantine.

"Compliance agreement" means a written agreement between a person engaged in growing, handling, receiving or moving regulated articles and the Virginia Department of Agriculture and Consumer Services, the U.S. Department of Agriculture, or both, wherein the former agrees to comply with the requirements of the compliance agreement.

"Infestation" means the presence of the pine shoot beetle or the existence of circumstances that make it reasonable to believe that the pine shoot beetle is present.

"Inspector" means any employee of the Virginia Department of Agriculture and Consumer Services, or other person authorized by the commissioner to enforce the provisions of the quarantine or regulation.

"Limited permit" or "permit" means a document in which an inspector affirms that the regulated article identified on the document is eligible for movement in accordance with this

regulation only to a specified destination and only in accordance with specified conditions.

"Moved," "move," or "movement" means shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

"Person" means any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

"Pine nursery stock" means all *Pinus* spp. woody plants, shrubs, and rooted trees, including dug (balled and burlaped) Christmas trees, and ornamental pine, such as bonsai.

"Pine shoot beetle" means the insect known as pine shoot beetle, *Tomicus piniperda* (Linnaeus), in any stage of development.

"Virginia Pest Law" means the statute set forth in ~~Article 6 (§ 3.1-188.20 et seq.) of Chapter 13~~ Chapter 7 (§ 3.2-700 et seq.) of Title ~~3.1~~ 3.2 of the Code of Virginia.

VA.R. Doc. No. R09-1703; Filed January 13, 2009, 11:22 a.m.

Final Regulation

Title of Regulation: 2VAC5-330. Rules and Regulations for Enforcement of the Virginia Pest Law-Virginia Gypsy Moth Quarantine (amending 2VAC5-330-10).

Statutory Authority: § 3.2-703 of the Code of Virginia.

Effective Date: March 4, 2009.

Agency Contact: Larry M. Nichols, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, FAX (804) 371-7793, TTY (800) 828-1120, or email larry.nichols@vdacs.virginia.gov.

Summary:

The amendments update citations to reflect the recodification of Title 3.1 to Title 3.2 of the Code of Virginia, which became effective October 1, 2008.

2VAC5-330-10. Definitions.

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

"Associated equipment" means articles associated with mobile homes and recreational vehicles such as, but not limited to: awnings, tents, outdoor furniture, trailer blocks, LP gas containers and trailer skirts.

"Compliance agreement" means a written agreement between a person engaged in growing, handling, or moving regulated articles, and the VDACS, U.S. Department of Agriculture (USDA), or both, wherein the former agrees to comply with the requirements of the compliance agreement.

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"Gypsy moth" means the insect "Lymantria dispar" (Linnaeus) in any living stage.

"Hazardous recreational vehicle site" means any site where a recreational vehicle is, or may be parked, which is determined by an inspector to harbor populations of gypsy moth that could be spread by movement of recreational vehicles or associated equipment.

"Inspector" means any employee of the Virginia Department of Agriculture and Consumer Services, or other person authorized by the commissioner to enforce the provisions of the quarantine and chapter.

"Mobile home" means any vehicle, other than a recreational vehicle, designed to serve, when parked, as a dwelling or place of business.

"Outdoor household articles" means articles associated with a household that have been kept outside the home, including but not limited to outdoor furniture, barbeque grills, building materials, children's play things, yard items, trash cans, dog houses, boats, hauling trailers, garden tools, tents, and awnings.

"Recreational vehicles" means highway vehicles, including pickup truck campers, one-piece motor homes, and camping or travel trailers, designed to serve as a temporary dwelling.

"Scientific permit" means a document issued by the Virginia Department of Agriculture and Consumer Services to authorize movement of regulated articles to a specified destination for scientific purposes.

"Virginia Pest Law" means that law set forth in ~~Article 6 (§ 3-1-188.20 et seq.) of Chapter 13 Chapter 7 (§ 3.2-700 et seq.)~~ of Title ~~3-1 3.2~~ of the Code of Virginia.

VA.R. Doc. No. R09-1704; Filed January 13, 2009, 11:23 a.m.

Final Regulation

Title of Regulation: 2VAC5-340. Rules and Regulations for the Enforcement of the Virginia Weights and Measures Law (amending 2VAC5-340-140, 2VAC5-340-170, 2VAC5-340-180).

Statutory Authority: § 3.2-5607 of the Code of Virginia.

Effective Date: March 4, 2009.

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

Summary:

The amendments update citations to reflect the recodification of Title 3.1 to Title 3.2 of the Code of Virginia, which became effective October 1, 2008.

2VAC5-340-140. Food products.⁸

A. Berries and Small Fruits. Shall be offered and exposed for sale and sold by weight or by volume in open measure containers having capacities per subdivision 1 or 2 of this subsection and when sold by volume, the containers shall be deemed not to be packages for labeling purposes.

1. Inch-Pound Capacities - ½ dry pint, 1 dry pint, or 1 dry quart.
2. Metric Capacities - 250 milliliters, 500 milliliters, or 1 liter.

B. Butter, Oleomargarine, and Margarine.⁹ Shall be offered and exposed for sale and sold by weight per subsection 1 or 2 of this section.

1. Inch-Pound-Weights - ¼ pound, ½ pound, 1 pound, or a multiple of 1 pound.
2. Metric Weights - 125 grams, 250 grams, 500 grams, or a multiple of 500 grams.

C. Flour, Cornmeal, and Hominy Grits. Wheat flour, whole wheat flour, graham flour, self-rising wheat flour, phosphated wheat flour, bromated flour, corn flour, cornmeal, and hominy grits whether enriched or not, shall be packaged, kept, offered, or exposed for sale, or sold only in weights per subdivisions 1 and 2 of this subsection; provided, that inch-pound sizes less than 2 pounds or more than 100 pounds and that metric sizes less than 1 kilogram or more than 50 kilograms shall be permitted.

(a) Inch-Pound Weights - 2, 5, 10, 25, 50, or 100 pounds.

(b) Metric Weights - 1, 2.5, 5, 10, 25, or 50 kilograms. (~~Section 3-1-952 Weights and Measures Law [repealed].~~)

D. Meat, Poultry, Fish, and Seafood¹⁰. Shall be sold by weight, except that shellfish may be sold by weight, measure, or count.

1. Combination With Other Foods. When meat, poultry, fish or seafood is combined with some other food element to form a distinctive food product, the quantity representation may be in terms of the total weight of the product or combination, and a quantity representation need not be made for each element.

2. Stuffed Fish, Seafood, Poultry or Meat Products. In the case of ready-to-cook stuffed fish, seafood, poultry, or meat products, the label must show the total net weight of the stuffed fish, seafood, poultry or meat products and the minimum net weight of the fish, seafood, poultry or meat in the product excluding the fish, seafood, meat, or poultry that may be part of the stuffing.

Excluding the poultry or meat that may be part of the stuffing. (Required by the United States Department of Agriculture).

E. Clams, Mussels, Oysters, and other Mollusks.

1. Whole clams, mussels, oysters, and other mollusks in the shell (fresh or frozen) shall be sold by weight (including the weight of the shell, but not including the liquid or ice packed with them), dry measure (e.g., bushel), or count. In addition, size designations may be provided.

2. Whole clams, mussels, oysters, or other mollusks on the half shell (fresh, cooked, smoked, or frozen, with or without sauces or spices added) shall be sold by weight (excluding the weight of the shell) or by count. Size designations may also be provided.

3. Fresh clams, mussels, oysters, or other mollusks removed from the shell and placed in a container shall be sold by fluid volume, with free liquid not to exceed 15% by weight.

4. Processed clams, mussels, oysters, or other mollusks on the half shell (fresh or frozen) shall be sold by net weight excluding the weight of the shell. The term "processed" means removing the meat from the shell and chopping it or cutting it or commingling it with other solid foods.

5. Canned (heat-processed) clams, mussels, oysters, or other mollusks shall be sold by net weight, with free liquid not to exceed 41% by weight for canned oysters.

F. Pickles. The declaration of net quantity of contents on pickles and pickles products, including relishes but excluding one or two whole pickles in a transparent wrapping which may be declared by count, shall be expressed in terms of liquid measure. Sales of pickles from bulk may be by count.

G. Pricing of Bulk Food Commodities. Bulk food commodities or food commodities not in package form and sold by weight shall be priced in terms of whole units of weight and not in common or decimal fractions.

H. Ready-To-Eat Food. The following may be sold by weight, measure, or count:

1. Items sold for consumption on the premises;
2. Items sold as one of three or more different elements, excluding condiments, comprising a ready-to-eat meal sold as a unit, for consumption elsewhere than on the premises where sold;
3. Ready-to-eat chicken parts cooked on the premises but not packaged in advance of sale;
4. Sandwiches and sandwich-like commodities when offered or exposed for sale on the premises where packed or produced and not intended for resale.

⁸ Packages subject to the Federal Fair Packaging and Labeling Act must be labeled in inch-pound units of measure. Metric units may also be declared on the principal display panel and may even appear first.

⁹ Oleomargarine and margarine are not permitted in multiples of one pound, 500 grams, or multiples of 500 grams because Section 407(b)(2) of the

Federal Food, Drug, and Cosmetic Act prohibits margarine and oleomargarine packaged in sizes greater than one pound.

¹⁰ See 2VAC5-340-140 for additional requirements for ready-to-eat food.

2VAC5-340-170. General.

A. Presentation of Price. Whenever an advertised, posted, or labeled price per unit of weight, measure, or count for any commodity includes a fraction of a cent, all elements of the fraction shall be prominently displayed, and the numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one-half of the height and width of the numerals representing the whole cent. (Weights and Measures Law ~~Section 3-1-949~~ § 3.2-5631)

B. Allowable Differences: Combination Quantity Declarations. Whenever the method of sale for a bulk or packaged commodity requires the use of a statement, that includes count in addition to weight, measure, or size, the following shall apply to the particular commodity:

1. Beverageware: Pressed and Blown Tumblers and Stemware. The allowable difference between actual and declared capacity shall be:

- a. For Inch-Pound:
 - (1) Plus or minus ¼ fluid ounce for items of five fluid ounce capacity or less;
 - (2) Plus or minus 5% of the stated capacity for items over five fluid ounce capacity.

- b. For Metric:
 - (1) Plus or minus 10 milliliters for items of 200 milliliter capacity or less;
 - (2) Plus or minus 5% of the stated capacity for items over 200 milliliter capacity.

C. Machine Vended Commodities. All vending machines dispensing packaged commodities shall indicate:

1. Product identity.
2. Net Quantity.
3. Name, address, and telephone number of responsible party.

The requirements for product identity and net quantity can be met either by display of the package or by information posted on the outside of the machine.

D. Railroad Car Tare Weights. Whenever stenciled tare weights on freight cars are employed in the sale of commodities or the assessment of freight charges, the following conditions and requirements shall apply:

1. Newly or Restenciled Tare Weights. All newly stenciled or restenciled tare weights shall be accurately represented to the nearest 100 pounds for inch-pound units and the

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nearest 50 kilograms for metric units and the representation shall include the date of weighing.

2. Allowable Differences. The allowable difference between actual tare weight and stenciled tare weight on freight cars in use shall be per subdivision D 2 a or b of this section.

a. Inch-pound allowable difference:

(1) Plus or minus 300 pounds for cars 50,000 pounds or less;

(2) Plus or minus 400 pounds for cars over 50,000 pounds to and including 60,000 pounds;

(3) Plus or minus 500 pounds for cars over 60,000 pounds.

b. Metric allowable difference:

(1) Plus or minus 150 kilograms for cars 25,000 kilograms or less;

(2) Plus or minus 200 kilograms for cars over 25,000 kilograms to and including 30,000 kilograms;

(3) Plus or minus 250 kilograms for cars over 30,000 kilograms.

3. Change of Stenciled Weights. Tare weight determinations for verification or change of stenciled weights shall only be made on properly prepared and adequately cleaned freight cars.

4. Responsibility For Reweighing and Restenciling. Tank cars, covered hopper cars, flat cars equipped with multideck racks, or special superstructure, mechanical refrigerator cars, and house-type cars equipped with special lading protective devices must be reweighed and restenciled only by owners or other authorized representatives:

(a) When car bears no light weight (empty weight) stenciling;

(b) When repairs or alterations result in a change of weight in excess of the permissible lightweight tolerance.

2VAC5-340-180. Exemptions from sealing or marking and/or annual retesting of weights and measures devices.

A. Weights and Measures Specifically Exempted. The weights and measures listed below shall be specifically exempted from the sealing and marking requirements of §§ ~~3-1-926~~ 3.2-5607 and ~~3-1-934~~ 3.2-5613 of the Code of Virginia.

B. Annual Retesting Exemption. The weights and measures listed below shall be specifically exempted from the annual retesting requirements of §§ ~~3-1-926~~ 3.2-5607 and ~~3-1-928~~ 3.2-5609 of the Code of Virginia, and shall be retested only as required:

1. Vehicle tanks used as measures.*

2. Farm milk tanks.*

3. Liquid measures.*

4. Glass graduates.*

5. Measures containers.*

6. Linear measures.*

7. Dry measures.*

* Whenever an item of this class is damaged, repaired, or modified in any way that affects the accuracy of measurement, it shall not thereafter be used for measurement until it has been officially inspected and reapproved.

VA.R. Doc. No. R09-1705; Filed January 13, 2009, 11:23 a.m.

Final Regulation

Title of Regulation: **2VAC5-350. Rules and Regulations for the Enforcement of the Virginia Commission Merchant Law (amending 2VAC5-350-10 through 2VAC5-350-60, 2VAC5-350-80).**

Statutory Authority: § 3.2-4704 of the Code of Virginia.

Effective Date: March 4, 2009.

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

Summary:

The amendments update citations to reflect the recodification of Title 3.1 to Title 3.2 of the Code of Virginia, which became effective October 1, 2008.

2VAC5-350-10. Definitions.

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

"Buyer bill" means the document generated by the licensee showing the tobacco purchased by each buyer at each sale.

"Check register" means the daily journal that is maintained by the licensee to record each check issued by the warehouse covering tobacco sales.

"Coupon" means any one of the copies of the ticket.

"Long and short" document means the document provided by the buyer showing the adjustment in the bill to reflect tobacco received and paid for by the buyer.

"Ticket" means the document which is used to identify a single sale unit in the auction system.

"Tobacco sale bill" or "Floor sheet" means the document that is used to record the data from the ticket covering the sales transaction of individual sellers.

"Virginia Weights and Measure Law" means regulations promulgated under the requirements of Chapter ~~35~~ 56 (§ ~~3-1-919~~ 3.2-5600 et seq.) of Title ~~3-1~~ 3.2 of the Code of Virginia.

2VAC5-350-20. Applicability.

This chapter shall apply to tobacco auction warehouses licensed under the Commission Merchants Law, ~~Article 2~~ (§ ~~3-1-692 et seq.~~) of Chapter ~~26~~ Chapter 47 (§ ~~3.2-4709 et seq.~~) of Title ~~3-1~~ 3.2 of the Code of Virginia.

2VAC5-350-30. Records to be kept.

A. For the purpose of complying with § ~~3-1-713(h)~~ 3.2-4729 (8) of the Code of Virginia, and in order to give a true account of sales as required in § ~~3-1-709(e)~~ 3.2-4724 (3) of the Code of Virginia, the following records shall be kept by the licensee and made available for inspection by the ~~Commissioner~~ commissioner. This does not preclude the inclusion of other information needed by the licensee or others:

1. Sequentially numbered tickets covering sales transactions. A sale transaction is defined as a transaction appearing on the tobacco sales bill for which the seller received payment.
2. Preprinted sequentially numbered tobacco sale bills, including voided tobacco sale bills.
3. Check registers.
4. Buyer bills or recap sheet of buyers bills.
5. Long and short documents.

B. The licensee shall accurately record on the ticket:

1. Seller identification. (Grower's name or crop number.)
2. Warehouse number or name.
3. Ticket number - preprinted sequential numbers meet this requirement for flue-cured. Sale bill number plus line number suffix and basket number meets this requirement for burley.
4. Tobacco sale bill number.
5. Date of weighing.
6. Net weight.
7. Buyer.
8. Price.

And provide space for the USDA inspector to record:

9. USDA grade.
10. Date of grading.

11. Grader identification.

C. The licensee shall accurately record on the tobacco sale bill:

1. Tobacco sale bill number - preprinted sequential numbers meet this requirement.
2. Sale date.
3. Seller identification.
4. Warehouse identification.
5. The following information for each ticket covered by the tobacco sale bill:
 - a. Ticket number or basket number.
 - b. Buyer.
 - c. Net weight.
 - d. Price per pound.
 - e. Sale extension - amount.
6. Warehouse charges.
7. Excise tax deduction.
8. Amount paid seller.

D. The licensee shall accurately record in the check register or other comparable record the following information:

1. Check number.
2. Date of issue.
3. Tobacco sale bill number.
4. Amount paid.

E. The licensee shall accurately record the following information on the buyer bill for each sale unit purchased by the buyer:

1. Ticket or basket number.
2. Net weight.
3. Price.
4. Tobacco sale extension - amount.

2VAC5-350-40. Accountability for alterations to records.

A. Alterations. Section ~~3-1-713(h)~~ 3.2-4729 (8) of the Code of Virginia requires that "any record which is altered in any fashion must bear the full signature of the person authorized to make, and who is responsible for, the alteration." For the purpose of this chapter, alterations to such records shall apply only to tickets and tobacco sale bills. Such alterations made by the warehouse owner, operator, ticket marker, or bookkeeper may be identified by their initials, provided that their full signature and the initials to be used are posted in the tobacco warehouse office.

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1. Ticket. Alterations to the ticket shall apply only to the weight, buyer, or price; and shall have the full signature or initials permitted in this subsection of the person authorized to make, and who is responsible for, the alteration.

2. Tobacco sale bill. Alterations on tobacco sale bills shall apply only to the weight, buyer, price, or total net amount due to the seller; and shall have the full signature or initials permitted in this subsection of the person authorized to make, and who is responsible for, the alteration.

B. Full signature. For the purpose of § ~~3-1-713(h)~~ 3.2-4729 (8) of the Code of Virginia and this chapter, the following examples are considered full signatures:

~~(1)~~ 1. John Henry Jones

~~(2)~~ 2. John H. Jones

~~(3)~~ 3. John Jones

~~(4)~~ 4. J.H. Jones

~~(5)~~ 5. J. Jones

2VAC5-350-50. Sales rejected by the seller.

For the purpose of meeting the requirements of § ~~3-1-713(h)~~ 3.2-4729 (8) of the Code of Virginia, any record ~~which that~~ is altered because of a rejected sale by the seller shall be so indicated on the tobacco sale bill by the word "rejected," or the letter "R," and properly initialed as permitted by subsection A of 2VAC5-350-40. The rejected sale ticket or coupon is not required to be kept.

2VAC5-350-60. Authorization from consignor for licensee to buy tobacco for his own account except during auction.

For the purpose of § ~~3-1-718(e)~~ 3.2-4737 (5) of the Code of Virginia, prior authority from the consignor in writing is required only when the licensee purchases the tobacco for his own account except at auction. Where prior written authority has not been obtained from the consignor, a telephone conversation or other oral authorization by the consignor permitting the licensee to buy his tobacco for his own account shall be permitted, provided that written authorization is given by the consignor signing the ticket or other appropriate statement before a final sale is consummated.

The licensee does not need written authorization to act in behalf of a producer by rejecting a sale and making disposition of the tobacco in accordance with 2VAC5-350-80 as follows:

1. Holding for resale at auction.
2. Reselling to the original buyer at a higher price.
3. Reselling to another buyer at the same or a higher price.

2VAC5-350-80. Alterations to tickets and tobacco sales bills.

Alterations to weight, buyer, price, or total amount due the producer may be made by persons authorized to make, and who are responsible for, such alterations under the following conditions and requirements:

1. Weight on ticket. Only persons authorized by 2VAC5-340-190 may alter weights on tickets. Changes shall be initialed as provided in 2VAC5-340-190.

2. Buyer or price on ticket during auction. As long as the auctioneer controls the sale, the ticket marker is authorized to make, and is responsible for, alterations on the ticket as to the buyer or price. Changes must be initialed by the ticket marker.

3. Buyer or price on ticket after auction. When the auctioneer is no longer in control of the sale, alterations on the ticket as to the buyer or price may be made by the person outlined below with signature as indicated:

a. When the producer rejects a sale, the following disposition of the sales unit may be made:

(1) Producer may hold for resale - no signature required.

(2) Producer may sell to original buyer at a higher price. The original buyer must sign the ticket.

(3) Producer may sell to another buyer. The producer and the new buyer must sign the ticket.

b. When the original buyer finds a sale unit to be objectionable, the following disposition of the sale unit may be made:

(1) The original buyer may sell the sale unit to another buyer who may be the licensee. Both the original buyer and the new buyer, including the licensee if he is the new buyer, must sign the ticket; or

(2) In the event the sale unit is found to be nested, unsound or unsafe, or contains foreign matter or inferior tobacco to the extent that the quality of the sale unit is significantly lowered, the buyer may ask for a reinspection by the USDA grader. If the sale unit is determined by the grader to be of lower quality, the buyer may reject the sale unit, which would then be held by the licensee for disposition by the seller. The original buyer must sign the ticket.

c. When the licensee rejects a sale on behalf of a producer, the following disposition of the sale unit may be made:

(1) Without written authorization from the producer, as required in § ~~3-1-718(e)~~ 3.2-4737 (5) of the Code of Virginia to buy tobacco for his own account, the licensee:

(a) May hold for future sale.

(b) May resell to the original buyer at a higher price. The original buyer must sign the price alteration.

(c) May sell to another buyer, other than himself. The original buyer must sign to release the sales unit, and the new buyer must sign to accept the sales unit.

(2) With written authorization from the producer, as required by § ~~3-1-718(e)~~ 3.2-4737 (5) of the Code of Virginia to buy tobacco for his own account, the licensee may, in addition to the options listed in ~~paragraph~~ subdivision c (1) above, reject the sale and purchase the tobacco for his own account, provided that the licensee signs the ticket.

VA.R. Doc. No. R09-1706; Filed January 13, 2009, 11:24 a.m.

Final Regulation

Title of Regulation: **2VAC5-360. Regulations for the Enforcement of the Virginia Commercial Feed Act (amending 2VAC5-360-10, 2VAC5-360-50).**

Statutory Authority: § 3.2-4801 of the Code of Virginia.

Effective Date: March 4, 2009.

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

Summary:

The amendments update citations to reflect the recodification of Title 3.1 to Title 3.2 of the Code of Virginia, which became effective October 1, 2008.

2VAC5-360-10. Definitions.

A. Words used in the singular form in this chapter shall include the plural, and vice versa, as appropriate.

B. All terms used in this chapter shall have the meaning set forth for such in the Act. In addition, the following words and terms shall have the following meanings; unless the context clearly indicates otherwise:

"Act" means Chapter ~~28-1~~ 48 (§ ~~3-1-828-1~~ 3.2-4800 et seq.) of Title ~~3-1~~ 3.2 of the Code of Virginia, hereinafter known as the Virginia Commercial Feed Act.

"Animal" means any animate being which is not human.

"Adulteration" means a commercial feed is adulterated if:

1. Enough of any harmful or non-nutritive ingredient has been added to endanger animal health when used according to labeling directions.
2. Any part of an essential component has been omitted, removed, or replaced with an inferior substance.

3. The composition or quality of the feed fails to conform to its representation in the labeling.

4. It was prepared or held under unsanitary conditions.

5. It contains any filthy, putrid, decomposed, tainted, unsound or unwholesome substance.

6. Its container is composed of any substance which may cause the feed to endanger animal health.

"Board" means the Virginia Board of Agriculture and Consumer Services.

"Brand" means the term, design, or trademark and other specific designation under which an individual commercial feed is distributed in Virginia.

"Canned animal food" means all materials packed in any airtight container with a moisture content of 70% or more which are distributed for use as food for animals other than humans.

"Commercial feed" means all mixed or unmixed feed including concentrates, supplements, molasses, minerals, mineral mixtures, and all other materials used for their nutritional or physical properties for feeding to animals except those materials exempted by the Act.

"Commissioner" means the Virginia Commissioner of Agriculture and Consumer Services or his delegated assistant or agent.

"Distribute" means to offer or expose for sale, sell, warehouse, exchange, barter, furnish or otherwise supply.

"Distributor" means a person who distributes commercial feeds.

"Feed ingredient" means each of the constituent materials making up a commercial feed.

"Inert mineral matter" means mineral matter that has no nutritional value.

"Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed. The invoice or delivery slip with which a commercial feed is distributed in bulk is the label.

"Labeling" means any written, printed, graphic, electronic, or advertising information pertaining to the commercial feed which is:

1. On the commercial feed or any of its containers,
2. On the invoice or delivery slip,
3. Accompanying the commercial feed at any time, or
4. Otherwise provided to the consumer.

"Medicated feed" means a product obtained by mixing a drug, as defined in § ~~3-1-828-2~~ 3.2-4800 of the Code of

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Virginia, and a commercial feed. It is subject to all provisions of the Virginia Commercial Feed Act.

"Misbranding" means a commercial feed is misbranded if:

1. The label does not include:
 - a. The name and principal address of the manufacturer, distributor, or person responsible for placing the commercial feed on the market.
 - b. The name, brand or trademark under which the commercial feed is sold.
 - c. An accurate quantity statement of the contents.
 - d. An accurate statement of the minimum percentage of crude protein.
 - e. An accurate statement of the minimum percentage of crude fat.
 - f. An accurate statement of the maximum percentage of crude fiber.
 - g. An accurate statement of the maximum percentage of moisture for all dog and cat foods.
 - h. The English name of each ingredient or conform to the requirements of 2VAC5-360-40.
 - i. Adequate warnings against use under normal or pathological conditions where its use may endanger animal health, or against unsafe use or application as necessary for the protection of animals.
2. Labeling is false or misleading in any particular.
3. It is distributed under the name of another commercial feed.
4. Its container is so made, formed or filled as to be deceptive or misleading as to the amount of contents.
5. Its labeling bears any reference to registration or license under the Act.
6. It is represented as containing a feed ingredient, unless such feed ingredient conforms to the definition prescribed by regulation of the board.
7. Any word, statement or other information required by the Act is not prominently placed upon the label so conspicuously (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to make it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

"Official sample" means any sample of feed taken by the commissioner and designated as "Official" by the commissioner.

"Person" means an individual, partnership, association, corporation, firm, agent or authorized group of individuals whether incorporated or not.

"Prohibited noxious-weed seeds" means the seeds of perennial weeds which not only reproduce by seed but which also spread by underground roots and stems; and which, when established, are highly destructive and are not controlled in the Commonwealth by commonly used cultural practices. These include but are not limited to the seeds of Balloonvine-Cardiospermum halicacabum, Field bindweed-Convolvulus arvensis, Quackgrass-Agropyron repens, Canada thistle-Cirsium arvense, Johnson grass-Sorghum spp., perennial, Plumeless thistle, which includes Musk thistle and Curled thistle Carduus spp., Serrated tussock-Nassella trichotoma, and Sicklepod-Senna obtusifolia.

"Restricted noxious-weed seeds" means the seeds of weeds which are very objectionable in fields, lawns and gardens in this Commonwealth and are difficult to control by commonly used cultural practices. These include but are not limited to seeds of Dodder Cuscuta spp., Bermudagrass Cynodon dactylon, Wild onion bulblets, Wild garlic bulblets Allium spp., Wild mustard Brassica spp., Giant foxtail-Setaria faberiana, radish-Raphanus, and Annual bluegrass-Poa annua.

"Sell" means sales, barter, or exchange.

"Ton" means a net weight of 2,000 pounds, avoirdupois.

2VAC5-360-50. Labeling.

A. The information required in ~~§ 3-1-828.5~~ 3.2-4806 of the Code of Virginia, with the exception of the quantity statement, shall appear in its entirety on one side of a label or on one side of the container. However, in case a tag is used, the directions for use and warnings against misuse may appear on the other side of the tag.

B. When ingredients are listed, the names of all feed ingredients shall be shown in letters or type of the same size.

C. When feeds carry label information in more than one position on the container, there shall be no variance with respect to name, ingredients, or guaranteed composition.

D. The term "degermed" must precede the name of any product from which the germ has been wholly or partially removed.

E. All printed or written information attached to or packed with feed must conform in all respects to the information printed on the principal label.

F. Labeling which implies that added enzyme-bearing materials improve the utilization of a product is prohibited unless the claims are substantiated by scientific evidence.

G. The term "Bond Phosphate of Lime," "Bone Phosphate of Lime (BPL)," or "BPL" shall not be used in connection with the labeling of feed ingredients.

H. The label of a commercial feed, other than an individual ingredient or supplement with directions for further mixing, shall designate the species and may designate the animal class

for which the feed is intended. For the purpose of this subsection, animal class may include, but is not limited to, weight range, sex, or age of the animal for which the feed is manufactured.

VA.R. Doc. No. R09-1707; Filed January 13, 2009, 11:24 a.m.

Final Regulation

Title of Regulation: **2VAC5-370. Rules and Regulations for Enforcement of the Virginia Animal Remedies Law (amending 2VAC5-370-10).**

Statutory Authority: §§ 3.2-109, 3.2-4912 and 3.2-4914 of the Code of Virginia.

Effective Date: March 4, 2009.

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

Summary:

The amendments update citations to reflect the recodification of Title 3.1 to Title 3.2 of the Code of Virginia, which became effective October 1, 2008.

2VAC5-370-10. Equipment and supervision.

At the request of the Commissioner of the Department of Agriculture and Consumer Services, a registrant shall provide a description of his equipment and a list of the qualifications of his supervisory personnel. Such reports, together with further investigation, if necessary, will form the basis for determining if the requirements of subdivision 3 of § 3-1-837(3) 3.2-4912 of the Code of Virginia are being met as they apply to adequate equipment and proper supervisory qualifications.

VA.R. Doc. No. R09-1708; Filed January 13, 2009, 11:24 a.m.

Final Regulation

Title of Regulation: **2VAC5-380. Rules and Regulations for the Enforcement of the Virginia Dealers in Agricultural Products Law (amending 2VAC5-380-10, 2VAC5-380-60).**

Statutory Authority: § 3.2-109 of the Code of Virginia.

Effective Date: March 4, 2009.

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

Summary:

The amendments update citations to reflect the recodification of Title 3.1 to Title 3.2 of the Code of Virginia, which became effective October 1, 2008.

2VAC5-380-10. Definitions.

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

"Buyer or shipper" means a dealer who purchases any agricultural product from a producer, and who takes possession at the buyer's or the producer's place of business at an agreed price without conditions or contingencies.

"Conditional buyer" means a dealer who purchases any agricultural product from a producer by quoting a fixed net price or fixed gross price less handling charges. The purchase is conditioned upon the arrival of the product at the first point of delivery in the grade specified at the time of purchase. (Grade shall include size, quality, and soundness.)

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

"Grower's agent or broker" means a dealer who negotiates the sale of agricultural produce on behalf of the producer according to the terms of an agreement between the parties. Written agreements are recommended but not required.

"Handling for the account of" means a dealer who accepts agricultural products from a producer to be sold directly to a specific and identified purchaser, exclusive of intermediate dealers, agents or brokers, for which the dealer charges a fixed percentage commission on gross returns, or a fixed fee per unit of product, with or without additional charges such as grading, packing, etc.

"Virginia Agricultural Products Dealers Licensing and Bonding Law" means Article 3 Chapter 47 (§ 3-1-722-1 3.2-4738 et seq.) of Chapter 26 of Title 3-1 3.2 of the Code of Virginia.

2VAC5-380-60. Filing of contracts.

Copies of all contracts made pursuant to § 3-1-722-14 3.2-4745 of the Code of Virginia shall be filed with the Office of Product Regulation, Virginia Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, Virginia 23209.

VA.R. Doc. No. R09-1709; Filed January 13, 2009, 11:25 a.m.

Final Regulation

Title of Regulation: **2VAC5-390. Rules and Regulations for the Enforcement of the Virginia Seed Law (amending 2VAC5-390-20, 2VAC5-390-30, 2VAC5-390-40, 2VAC5-390-60, 2VAC5-390-70, 2VAC5-390-80, 2VAC5-390-100, 2VAC5-390-110, 2VAC5-390-120, 2VAC5-390-160, 2VAC5-390-170, 2VAC5-390-180).**

Statutory Authority: § 3.2-4001 of the Code of Virginia.

Effective Date: March 4, 2009.

Regulations

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

Summary:

The amendments update citations to reflect the recodification of Title 3.1 to Title 3.2 of the Code of Virginia, which became effective October 1, 2008.

2VAC5-390-20. Noxious weed seeds.

Noxious weed seeds as defined in the Virginia Seed Law, ~~Article 1 (§ 3-1-262 3.2-4000 et seq.) of Chapter 16 of Title 3-1 3.2~~ of the Code of Virginia are divided into two classes:

A. Prohibited noxious weed seeds are:

- Balloonvine - *Cardiospermum halicacabum*
- Canada thistle - *Cirsium arvensis*
- Field Bindweed - *Convolvulus arvensis*
- Johnsongrass, Sorgrass and, *Sorghum almum*, and hybrids derived therefrom - *Sorghum* spp. - Perennial
- Plumeless thistles, which includes Musk thistle, and Curled thistle - *Carduus* spp.
- Quackgrass - *Agropyron repens*
- Serrated tussock - *Nassella trichotoma*
- Sicklepod - *Cassia tora*

B. Restricted noxious weed seeds are:

1. Restricted noxious weed seeds for agricultural and vegetable seed, except for lawn and turf seed and mixtures thereof, shall be prohibited from sale for seeding purposes if the number per ounce or per pound of such noxious weed seed found exceeds the limitations allowed for each. Such weed seeds and limitations shall be:

KIND	LIMITATION
Wild onion bulblets and wild garlic bulblets - <i>Allium</i> spp.	5 per ounce or 80 per pound for orchardgrass; 2 per ounce or 32 per pound for other kinds
Dodder - <i>Cuscuta</i> spp.	4 per ounce or 64 per pound
Wild mustard - <i>Brassica</i> spp. - includes species when incidentally occurring in agricultural seed, provided that species listed in §§ 5 and 9 of the regulations	5 per ounce all or 80 per pound

2VAC5-390-50 and 2VAC5-390-90 may be sold as such when labeled as required.

Giant foxtail - <i>Setaria faberi</i>	4 per ounce or 64 per pound
Radish - <i>Raphanus</i> spp.	1 per ounce or 16 per pound

2. Restricted noxious weed seeds for lawn and turf seed and mixtures thereof. Those kinds listed below shall be restricted noxious weed seeds and shall be declared on the label under the heading "Noxious weed seeds" or "Undesirable grass seed" according to § ~~3-1-264 (1) (5) 3.2-4008 J 5~~ when present in bentgrasses, Kentucky bluegrass, chewings fescue, red fescue, hard fescue, varieties of perennial ryegrass, varieties of named turf type tall fescue, and/or mixtures containing these grasses. Such weed seeds are:

Annual bluegrass	<i>Poa annua</i>
**Bentgrasses (creeping, colonial, velvet)	<i>Agrostis</i> spp.
**Bermudagrass, Giant bermudagrass	<i>Cynodon</i> spp.
**Meadow fescue	<i>Festuca pratensis</i>
Orchardgrass	<i>Dactylis glomerata</i>
**Redtop	<i>Agrostis gigantea</i>
**Rough bluegrass	<i>Poa trivialis</i>
**Tall fescue	<i>Festuca arundinacea</i>
Timothy	<i>Phleum pratense</i>
Velvetgrass	<i>Holcus lanatus</i>
**May be included as a labeled component of a mixture when in excess of 5.0% of the whole.	

NOTE - EXEMPTIONS - This chapter does not apply to restricted noxious weed seeds in grasses or mixtures clearly labeled for pasture, forage, hay, or spoilbank reclamation usage.

2VAC5-390-30. Net weight requirements.

A. Net weight is required on all containers except on packets containing less than ½ ounce avoirdupois.

B. All net weight labeling shall be consistent with the requirements of the Virginia Weights and Measures Law, Chapter ~~35 56~~ (§ ~~3-1-919 3.2-5600~~ et seq.) of Title ~~3-1 3.2~~ of the Code of Virginia and the Virginia Weights and Measures regulations except that when a seed tag is used the net weight information may appear on the seed tag rather than on the seed bag.

2VAC5-390-40. Labeling treated seed.

A. Contents of label. All seed "treated" as defined by ~~§ 3-1-263~~ § 3.2-4000 of the Code of Virginia, shall be labeled in type no smaller than eight points to indicate that such seed has been treated and to show the name of any substance or a description of any process (other than application of a substance) used to treat such seed, for example:

Treated with -(Name of substance or process)

or -(Name of substance or process) treated.

If the substance used in such treatment in the amount remaining with the seed is harmful to humans or other vertebrate animals, the seed shall also bear a label containing statements as specified by subsections C and D below. The label shall contain the required information in any form that is clearly legible and complies with this chapter. The information may be on the analysis tag, on a separate tag, or printed on the container in a conspicuous manner.

B. Name of substance. The name of any substance as required by subsection A of this section shall be commonly accepted coined, chemical (generic), or abbreviated chemical name. Commonly accepted coined names are not private trademarks and are free for use by the public and are commonly recognized as names of particular substances such as thiram, captan, lindane, and dichlone. Examples of commonly accepted chemical (generic) names are: bluestone, calcium carbonate, cuprous oxide, zinc hydroxide, hexachlorobenzene and ethyl mercury acetate. The terms "mercury" or "mercurial" may be used to represent all types of mercurial compounds. Examples of commonly accepted abbreviated chemical names are: BHC (1,2,3,4,5,6, Hexachloroclohexane) and DDT (dichloro diphenyl trichloroethane)

C. Mercurials and similarly toxic substance.

1. Seeds treated with a mercurial or similarly toxic substance, if any amount whatsoever remains with the seed, shall be labeled to show a representation of a skull and crossbones at least twice the size of the type used for information required to be on the label under subsection A and shall also include in red letters on a background of distinctly contrasting color a statement substantially as follows: "Treated with Poison," "Poison treated," or "Poison." Such treatment shall appear in type no smaller than eight points.

2. Substances similarly toxic to mercurials include the following: Aldrin (technical); demeton; dieldrin; endrin; heptachlor; O, O-diethyl S-(ethylthiomethyl) phosphorodithiolate; and O, O-diethyl S-2 (ethylthio) ethyl phosphorodithiolate. Any amount of such substances remaining with the seed shall be considered harmful to humans and other vertebrate animals.

D. Other harmful substances. If any substance, other than one which would be classified as a mercurial or similarly toxic substance under subsection C., is used in the treatment of seed; the amount remaining with the seed is considered harmful to humans or other vertebrate animals unless the seed is in containers of four ounces or less. Seed treated with such substances shall be labeled with an appropriate caution statement in type no smaller than eight points worded substantially as follows: "Do not use for food," "Do not use for feed," "Do not use for oil purposes," or "Do not use for food, feed, or oil purposes." This subsection applies to all chemical substances not within subsection C. except that the following substances shall not be deemed harmful when present at a rate less than the number of parts per million indicated:

Allethrin - 2 p.p.m.

Malathion - 8 p.p.m.

Methoxychlor - 8 p.p.m.

Piperonyl butoxide - 20 p.p.m. except 8 p.p.m. on Oat and Sorghum.

Pyrethrins -- 3 p.p.m. except 1 p.p.m. on Oat and Sorghum.

E. Weight of treatment substance. When the weight of treatment substances added exceed 1.0% of the net weight of seed, the rate of treatment must be given on the analysis tag.

2VAC5-390-60. Weed seeds.

As provided by subdivision 1 f of § 3-1-265 I(A)(6) ~~3.2-4015~~ of the Code of Virginia, agricultural seed of the following kinds may contain weed seeds not to exceed the following limitations:

~~A. 1.~~ Korean Lespedeza -- Lespedeza stipulacea 1.50%

~~B. 2.~~ Orchardgrass -- Dactylis glomerata (Hulled) 1.50%

~~C. 3.~~ Oatgrass, tall -- Arrhenatherum elatius 1.50%

~~D. 4.~~ Redtop -- Agrostis gigantea 1.50%

2VAC5-390-70. Code designation.

As provided by ~~§ 3-1-264, subsections B paragraph (12)(b) and I(10)(b)~~ § 3.2-4008 C 12 and J 10 of the Code of Virginia, any Virginia seed dealer may request from the commissioner a code designation to be used in lieu of his name and address for use on seed labeled for intrastate shipment provided; however, such shipments must be labeled to show the name and address of the consignee. Such designation will bear the prefix VDACS followed by an appropriate assigned number; however, a bona fide AMS (C&MS) number may be used in lieu of the VDACS code designation provided it is recorded with the commissioner by the seed dealer.

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2VAC5-390-80. Controlled conditions.

Controlled conditions are those minimum field standards for certification last established by the State Certified Seed Board as authorized under ~~Article 2~~, Chapter 46, ~~40~~ (§ 3.2-4000 et seq.) of Title 3-1 3.2 of the Code of Virginia.

2VAC5-390-100. Origin.

Origin as required by § ~~3-1-264(B)(4)~~ 3.2-4008 C 4 of the Code of Virginia shall not apply to seed in lawn or turf grass mixtures in prepacked containers of fifty pounds or less; however, the formulator of such mixtures shall maintain origin records as required by § ~~3-1-266~~ 3.2-4006 of the Code of Virginia.

2VAC5-390-110. Flower seed and minimum germination standards.

A. The kinds of flower seeds listed below are those for which standard testing procedures have been prescribed and which are, therefore, required to be labeled in accordance with the germination labeling provisions of §§ ~~3-1-263~~ 3.2-4000 and ~~3-1-264~~ 3.2-4008 of the Code of Virginia. The percentage listed opposite each kind is the germination standard for that kind. For the kinds marked with an asterisk, this percentage is the total of percentage germination and percentage hard seed. For other kinds, it is the percentage germination.

Kind	Minimum Germination Standard		
African daisy-- <i>Dimorphotheca sinuata</i>	55	Calliopsis-- <i>Coreopsis tinctoria</i> C. basalis	65
Ageratum-- <i>Ageratum houstonianum</i>	60	Campanula:	
Alyssum-- <i>Alyssum compactum</i> , <i>A.Lobularia maritima</i> , <i>A.saxatile</i>	60	Canterbury bells-- <i>Campanula medium</i>	60
Anemone-- <i>Anemone pulsatilla</i>	55	Cup and Saucer bellflower-- <i>Campanula medium calycanthema</i>	60
Angel's trumpet-- <i>Brugmansia arborea</i>	60	Carpathian bellflower-- <i>Campanula carpatica</i>	50
Arabis-- <i>Arabis alpina</i>	60	Peach bellflower-- <i>Campanula persicifolia</i>	50
Aster, China-- <i>Callistephus chinensis</i> except Pompon, Powderpuff, and Princess types	55	Candytuft, annual-- <i>Iberis amara</i> , <i>I.umbellata</i>	65
Aster, China-- <i>Callistephus chinensis</i> , Pompon, Powderpuff and Princess types	50	Candytuft, perennial-- <i>Iberis gibraltarica</i> , <i>I.sempervirens</i>	55
Aubrieta-- <i>Aubrieta deltoidea</i>	45	*Castor bean-- <i>Ricinus communis</i>	60
Balsam-- <i>Impatiens balsamina</i>	70	Cathedral bells-- <i>Cobaea scandens</i>	65
Calendula-- <i>Calendula officinalis</i>	65	Celosia-- <i>Celosia argentea</i>	65
California poppy-- <i>Eschscholzia californica</i>	60	Centaurea: basket flower-- <i>entaurea americana</i> , Cornflower-- <i>C. cyanus</i> , dusty miller-- <i>C.cineraria royal</i> , centaurea-- <i>C. imperialis</i> , sweet sultan, Amberboa moschata, Velvet centaurea-- <i>C. gymnocarpa</i>	60
		Chinese forget-me-not-- <i>Cynoglossum amabile</i>	55
		Chrysanthemum, annual-- <i>Chrysanthemum carinatum</i> , C., <i>coronarium</i> , C.segetum	40
		Clarkia-- <i>Clarkia unguiculata</i>	65
		Cleome-- <i>Cleome hassleriana</i>	65
		Columbine-- <i>Aquilegia</i> spp.	50
		Coral bells-- <i>Heuchera sanguinea</i>	55
		Coreopsis, perennial-- <i>Coreopsis lanceolata</i>	40
		Cosmos: Sensation, Mammoth and Crested type-- <i>Cosmos bipinnatus</i> ; Klondyke type-- <i>C. sulphureus</i>	65
		Dahlia-- <i>Dahlia</i> spp	55
		Delphinium: cardinal larkspur--perennial delphinium-- <i>Delphinium cardinale</i> ; Pacific giant, gold metal and other hybrids, belladonna, bellamosum types, Chinensis types <i>D.elatum</i>	55

Dianthus:		Marvel of Peru-- <i>Mirabilis jalapa</i>	60
Carnation-- <i>Dianthus caryophyllus</i>	60	Mignonette-- <i>Reseda odorata</i>	55
China pinks-- <i>Dianthus Chinensis</i> , Heddewigii, Heddensis	70	Myosotis-- <i>Myosotis alpestris</i> , <i>M.</i> <i>oblongata</i> , <i>M. pulastris</i> , <i>M. scorpioides</i>	50
Grass pinks-- <i>Dianthus plumarius</i>	60	Nasturtium-- <i>Tropaeolum</i> spp.	60
Maiden pinks-- <i>Dianthus deltoide</i>	60	Nemesia-- <i>Nemesia</i> spp.	65
Sweet William-- <i>Dianthus barbatus</i>	70	Nemophila-- <i>Nemophila menziesii</i> subsp. <i>insignis</i>	70
Sweet Wivelsfield-- <i>Dianthus X</i> <i>allwoodii</i>	60	Nicotiana-- <i>Nicotiana alata</i> , <i>N. X</i> <i>sanderac</i>	65
Dracena-- <i>Cordyline australis</i>	55	Nierembergia-- <i>Nierembergia</i> spp.	55
English daisy-- <i>Bellis perennis</i>	55	Nigella-- <i>Nigella damascena</i>	55
Foxglove-- <i>Digitalis</i> spp.	60	Pansy-- <i>Viola tricolor</i>	60
Gaillardia, annual-- <i>Gaillardia</i> <i>pulchella</i> , var. <i>picta</i> ; perennial-- <i>G. aristata</i>	45	Penstemon-- <i>Penstemon barbatus</i> , <i>P.</i> <i>grandiflorus</i> , <i>P. laevigatus</i> , <i>P. hirsutus</i>	60
Geum-- <i>Geum</i> spp.	55	Petunia-- <i>Petunia</i> spp.	45
Gilia-- <i>Gilia</i> spp.	65	Phacelia-- <i>Phacelia campanularia</i> , <i>P.</i> <i>minor</i> , <i>P. tanacetifolia</i>	65
Godetia-- <i>Clarkia amoena</i> var. <i>concinne</i>	65	Phlox, annual-- <i>Phlox drummondii</i> all types and varieties	55
Gourds-- <i>Cucurbita</i> spp.; <i>Lagenaria</i> spp.	70	Physalis-- <i>Physalis</i> spp.	60
Gypsophila: annual baby's breath-- <i>Gypsophila elegans</i> ; perennial baby's breath-- <i>G. paniculata</i> , <i>G. pacifica</i> , <i>G.</i> <i>repens</i>	70	Poppy: shirley poppy-- <i>Papaver rhoeas</i> ; Iceland poppy-- <i>P. nudicaule</i> ; oriental poppy-- <i>P. orientale</i> ; tulip poppy-- <i>P.</i> <i>glauca</i>	60
Helichrysum-- <i>Helichrysum bracteatum</i>	60	Portulaca-- <i>Portulaca grandiflora</i>	55
*Hollyhock-- <i>Alcea rosea</i>	65	Salpiglossis-- <i>Salpiglossis sinuata</i> <i>gloxiniiflora</i> , <i>S. salpiglossis</i>	60
*Ipomoea: Cypress vine-- <i>Ipomea</i> <i>quamoclit</i> ; Moonflower-- <i>I. alba</i> ; morning glories, cardinal climber, hearts and honey vine-- <i>I. spp.</i>	75	Salvia--Scarlet Sage-- <i>Salvia</i> <i>splendens</i> ; mealycup sage (blue bedder)-- <i>S. farinacea</i>	50
Job's tears-- <i>Coix lacryma-jobi</i>	70	Saponaria-- <i>Saponaria ocymoides</i> , <i>S.</i> <i>vaccaria pyramidata</i>	60
Kochia-- <i>Kochia scoparia trichophylla</i>	55	Scabiosa, annual-- <i>Scabiosa</i> <i>atropurpurea</i>	50
Larkspur, annual-- <i>Consolida ambigua</i>	60	Scabiosa, perennial-- <i>Scabiosa</i> <i>caucasica</i>	40
Lantana-- <i>Lantana camara</i>	35	Schizanthus-- <i>Schizanthus</i> spp.	60
Linaria-- <i>Linaria</i> spp.	65	Shasta Daisy-- <i>Chrysanthemum</i> <i>maximum</i> , <i>C. leucanthemum</i>	65
Lobelia, annual-- <i>Lobelia erinus</i>	65	Snapdragon-- <i>Antirrhinum</i> spp.	55
Lunaria, annual-- <i>Lunaria annua</i>	65	Solanum-- <i>Solanum</i> spp.	60
*Lupine-- <i>Lupinus</i> spp.	65		
Marigold-- <i>Tagetes</i> spp.	65		

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Stocks:Common--Matthiola incana;	65
Evening Scented--Matthiola longipetala subsp. bicornis	
Sunflower--Helianthus spp.	65
*Sweet pea, annual and perennial other than dwarf bush--Lathyrus odoratus, L. latifolius	75
*Sweet pea, dwarf bush--Lathyrus odoratus	65
Thunbergia--Thunbergia alata	60
Torch flower--Tithonia rotundifolia	70
Tritoma--Kniphofia spp.	65
Verbena, annual--Verbena X hybrida	35
Vinca--Catharanthus roseus	60
Viola--Viola cornuta	55
Wallflower--Cheiranthus cheiri	65
Zinnia--Zinnia angustifolia, Z. elegans, Z.grandiflora, Z. acerosa, Z. peruviana	50

B. Testing tolerances shall not be applied unless the percentage of germination is shown on the seed package or label attached to the seed container. If no germination percentage is shown on the label, the seed must meet the minimum standards without benefit of tolerance.

2VAC5-390-120. Labeling of flower seed.

Flower seeds shall be labeled with the name of the kind and variety or a statement of type and performance characteristics as prescribed by § ~~3.1-264(F)~~ and (G) 3.2-4008 G and H of the Code of Virginia.

A. For seeds of plants grown primarily for their blooms:

1. Seeds of a single name variety shall be labeled to show the kind and variety name. For example -- "Marigold, Butterball."
2. Seeds of a single type and color for which there is no special variety name shall be labeled to show either the type of plant or the type and color of bloom. For example - "Scabiosa, Tall, Large Flowered, Double, Pink."
3. Seeds consisting of an assortment or mixture of colors or varieties of a single kind, the kind name, the type of plant, and the type or types of bloom shall be indicated. In addition, it shall be clearly indicated that the seed is mixed or assorted. An example of labeling such a mixture or assortment is -- "Marigold, Dwarf double French, Mixed colors."

4. Seeds consisting of an assortment or mixture of kinds, shall clearly indicate that the seed is assorted or mixed and the specific use of the assortment or mixture shall be indicated. For example -- "Cut flower mixture," or "Rock garden mixture." Such statements as "Wild flower mixture," "General purpose mixture," "Wonder mixture," or any other statement which fails to indicate the specific use of the seed shall not meet the requirements of this provision unless the specific use of the mixture is also stated.

B. Seeds of plants grown for ornamental purposes other than their blooms shall be labeled to show the kind and variety, or the kind together with a descriptive statement concerning the ornamental part of the plant. For example -- "Ornamental gourds, Small fruited, Mixed."

2VAC5-390-160. Maximum percentage of inert matter.

Seed or seed mixtures as defined by § ~~3.1-263~~ 3.2-4000 of the Code of Virginia shall not contain more than 15% by weight of inert matter, excluding coating material which has been added to enhance the planting value.

2VAC5-390-170. Minimum size of peanut seed.

Shelled peanuts for agricultural seed as defined in § ~~3.1-263~~ 3.2-4000 of the Code of Virginia shall be a size of which 97% by weight of whole seed shall pass over a 16/64 inch screen and none shall pass through a 14/64 inch screen.

2VAC5-390-180. Minimum germination standard for peanut seed.

Peanuts for agricultural seed as defined in § ~~3.1-263~~ 3.2-4000 of the Code of Virginia shall have a 75% minimum total germination. However, effective March 1, 2008, and continuing until July 1, 2008, the minimum total germination shall be 70%.

VA.R. Doc. No. R09-1710; Filed January 13, 2009, 11:25 a.m.

Final Regulation

Title of Regulation: **2VAC5-400. Rules and Regulations for the Enforcement of the Virginia Fertilizer Law (amending 2VAC5-400-10, 2VAC5-400-30, 2VAC5-400-90).**

Statutory Authority: § 3.2-3601 of the Code of Virginia.

Effective Date: March 4, 2009.

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

Summary:

The amendments update citations to reflect the recodification of Title 3.1 to Title 3.2 of the Code of Virginia, which became effective October 1, 2008.

2VAC5-400-10. Definitions.

A. Except as the board designates otherwise in specific cases, the names and definitions for commercial fertilizer shall be those adopted as official by the Association of American Plant Food Control Officials.

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

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

"Fertilizer Law" means Chapter ~~40-1~~ 36 (§ ~~3-1-106-1~~ 3.2-3600 et seq.) of Title ~~3-1~~ 3.2 of the Code of Virginia, known as the Virginia Fertilizer Act.

"Pesticide Law" means Chapter ~~14-1~~ 39 (§ ~~3-1-249-27~~ (§§ 3.2-3900 and 3.2-3938 et seq.) of Title ~~3-1~~ 3.2 of the Code of Virginia, known as the Virginia Pesticide Control Act.

2VAC5-400-30. Specialty fertilizer labels.

A. The following information, if not appearing on the face or display side in a readable and conspicuous form, shall occupy at least the upper third of a side of the container, and shall be considered the label. (With the exception of "quantity statement," which must always appear on the display panel of the package or container.)

1. Quantity statement.
2. Brand name.
3. Grade.
4. Guaranteed Analysis:*

Total Nitrogen (N)	%	
		% Ammoniacal Nitrogen***
		% Nitrate Nitrogen***
		% Water Insoluble Nitrogen**
		% Urea Nitrogen***
		% (Other recognized and determinable forms of N)***
Available Phosphoric Acid (P ₂ O ₅)	%	
Soluble Potash (K ₂ O)	%	
Additional Plant Nutrients as prescribed by regulation.		
**Potential Acidity or	% or	lbs.

Basicity

Calcium Carbonate Equivalent per ton.

5. Sources of nutrients, when shown on the label, shall be listed below the completed guaranteed analysis statement.

6. Name and address of registrant.

NOTES:

* Zero (0) guarantees should not be made and may not appear in statement except in nutrient guarantee breakdowns.

** If claimed or the statement organic or slow acting nitrogen is used on the label.

*** If claimed or required.

B. Slowly available or slowly released plant nutrients.

1. No fertilizer label shall bear a statement that connotes or implies the presence of a slowly available or slowly released plant nutrient unless the nutrient or nutrients are identified and guaranteed at a level of at least 15% of the total guarantee for that nutrient or nutrients.

2. Types of products with slow release properties recognized are (i) water insoluble, such as natural organics, ureaform materials, urea-formaldehyde products, isobutylidene diurea, oxamide, etc., (ii) coated slow release, such as sulfur coated urea and other encapsulated soluble fertilizers, (iii) occluded slow release, where fertilizers or fertilizer materials are mixed with waxes, resins, or other inert materials and formed into particles and (iv) products containing water soluble nitrogen such as ureaform materials, urea-formaldehyde products, methylenediurea (MDU), dimethylenetriurea (DMTU), dicyanodiamide (DCD), etc. The terms "water insoluble," "coated slow release," "slow release," "controlled release," "slowly available water soluble," and "occluded slow release" are accepted as descriptive of these products, provided the manufacturer can show a testing program substantiating the claim (testing under guidance of Experiment Station personnel or a recognized independent researcher acceptable to the commissioner). A laboratory procedure, acceptable to the commissioner for evaluating the release characteristics of the product, must also be provided by the manufacturer upon request of the commissioner.

3. If a label states the amount of organic nitrogen present in a phrase, such as "25.0% organic nitrogen," then the water insoluble nitrogen guarantee must be not less than 60.0%

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of the nitrogen so designated. Coated urea shall not be included in meeting the 60% requirement.

Example: 10-6-4 Rose Food

25.0% of Nitrogen is Organic

10(Total N) X .25(% N claimed or Organic) X .60

(Average insolubility in H₂O) of organic nitrogen sources = 1.5% WIN

4. Association of Official Analytical Chemist (AOAC) herein referred to as AOAC International analytical methods or those adopted by the commissioner pursuant to § ~~3.1-106.4-B~~ 3.2-3601 B of the Virginia Fertilizer Act shall be used to substantiate the fact that "Coated-slow release" and "occluded slow release" materials are present.

C. Soil amendment and soil conditioners.

1. Each container of a soil amendment or soil conditioner shall be labeled in a legible and conspicuous form to show the following information:

- a. The quantity statement;
- b. The name of the product;
- c. The guaranteed analysis, including the common or usual English name and the percentage of each active ingredient, and the name and percentage of inert ingredients;
- d. A statement of the purpose of the product, stated in terms of the claimed or beneficial effect resulting from the use of the product;
- e. Adequate directions for use, and cautions or warnings against misuse, if applicable; and
- f. The name and address of the registrant.

2. Bulk lots shall be labeled by attaching a copy of a printed label to the invoice, or by the inclusion on the invoice of all information required by subdivision C 1 of this section. The invoice shall be given to the purchaser at the time of sale or delivery.

3. The commissioner may require proof of any claims made for any soil amendment or soil conditioner. If no claims are made, the commissioner may require proof of usefulness and value. For evidence of proof, the commissioner may rely on experimental data, evaluations or advice from such sources as the extension service of the Virginia Polytechnic Institute and State University and the Virginia State University. The experimental data shall relate to Virginia conditions for which the product is advertised or sold. The commissioner may accept or reject other sources of proof as additional evidence in evaluating soil amendments or soil conditioners.

4. No soil amending or soil conditioning ingredient may be listed or guaranteed on the labels or in labeling of soil amendments or soil conditioners without the commissioner's approval. The commissioner may allow a soil amending or soil conditioning ingredient to be listed or guaranteed on the label or in labeling if satisfactory supportive data is provided to substantiate the value and usefulness of the product. The commissioner may rely on outside sources such as the extension service of the Virginia Polytechnic Institute and State University and the Virginia State University for assistance in evaluating the data submitted. When a soil amending or soil conditioning ingredient is permitted to be listed and guaranteed, it must be verifiable by laboratory methods and is subject to inspection and analysis. The commissioner may prescribe methods and procedures of inspection and analysis of the soil amending or soil conditioning ingredient.

5. With the application for registration for each product the applicant shall submit a copy of the label, a copy of all advertisements and any other materials to be used in promoting the sale of the soil amendment or soil conditioner.

2VAC5-400-90. Sampling and analysis procedures.

Unless otherwise adopted by the commissioner pursuant to § ~~3.1-106.4-B~~ 3.2-3601 B of the Virginia Fertilizer Law, procedures for obtaining samples, sample preparation, and sample analysis shall be those described in the 17th edition (2000) of the "Official Methods of Analysis of AOAC International".

Procedures used in sample preparation and analysis for enforcement of this chapter are available from:

AOAC International
481 North Frederick Avenue
Suite 500
Gaithersburg, Maryland 20877-2417

VA.R. Doc. No. R09-1711; Filed January 13, 2009, 11:25 a.m.

Final Regulation

Title of Regulation: 2VAC5-440. Rules and Regulations for Enforcement of the Virginia Pest Law - Cotton Boll Weevil Quarantine (amending 2VAC5-440-20, 2VAC5-440-110).

Statutory Authority: § 3.2-703 of the Code of Virginia.

Effective Date: March 4, 2009.

Agency Contact: Frank M. Fulgham, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, FAX (804) 371-7793, TTY (800) 828-1120, or email frank.fulgham@vdacs.virginia.gov.

Summary:

The amendments update citations to reflect the recodification of Title 3.1 to Title 3.2 of the Code of Virginia, which became effective October 1, 2008.

2VAC5-440-20. Notice of quarantine.

Under the authority of ~~§§ 3.1-188.20 through 3.1-188.31:2~~ Chapter 7 (§ 3.2-700 et seq.) of Title 3.2 of the Code of Virginia, a quarantine of the Commonwealth of Virginia and all cotton producing states and countries infested with the boll weevil is hereby established to control, eradicate, and prevent the spread or reintroduction of the cotton boll weevil, "Anthonomus grandis grandis" Boheman.

2VAC5-440-110. Determination of reasonableness of costs for services, products, or articles.

The commissioner, pursuant to § ~~3.1-188.30~~ 3.2-711 of the Code of Virginia, may determine costs for services, products, or articles that shall be paid by the persons affected when those services, products, or articles are beyond the reasonable scope of the law.

VA.R. Doc. No. R09-1712; Filed January 13, 2009, 11:26 a.m.

Final Regulation

Title of Regulation: 2VAC5-450. Rules and Regulations Relating to the Virginia Plants and Plant Products Inspection Law (amending 2VAC5-450-20).

Statutory Authority: § 3.2-109 of the Code of Virginia.

Effective Date: March 4, 2009.

Agency Contact: Frank M. Fulgham, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, FAX (804) 371-7793, TTY (800) 828-1120, or email frank.fulgham@vdacs.virginia.gov.

Summary:

The amendments update citations to reflect the recodification of Title 3.1 to Title 3.2 of the Code of Virginia, which became effective October 1, 2008.

2VAC5-450-20. Nursery shipments out of the Commonwealth.

As authorized by ~~Article 7 Chapter 38~~ Chapter 38 (§ ~~3.1-188.32~~ 3.2-3800 et seq.) of Chapter 13 of Title 3.2 of the Code of Virginia, known as the Plants and Plant Products Inspection Law, Narcissus plants, bulbs, and vegetable transplants destined for shipment out of the Commonwealth are nursery stock. Narcissus bulbs inspected during the growing season, and again after they are dug and cleaned, may be eligible for certification.

VA.R. Doc. No. R09-1713; Filed January 13, 2009, 11:26 a.m.

Final Regulation

Title of Regulation: 2VAC5-490. Regulations Governing Grade "A" Milk (amending 2VAC5-490-10, 2VAC5-490-31).

Statutory Authority: § 3.2-5206 of the Code of Virginia.

Effective Date: March 4, 2009.

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

Summary:

The amendments update citations to reflect the recodification of Title 3.1 to Title 3.2 of the Code of Virginia, which became effective October 1, 2008.

Part I

Definitions and Standards of Identity

2VAC5-490-10. Definitions and standards of identity.

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

"A hazard that is reasonably likely to occur" means a hazard for which a prudent milk plant, receiving station or transfer station operator would establish controls because experience, illness data, scientific reports, or other information provide a basis to conclude that there is a reasonable possibility that, in the absence of these controls, the hazard will occur in the particular type of milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product being processed.

"Abnormal milk" means milk that is visibly changed in color, odor or texture.

"Acidified milk" means "acidified milk" as defined in 21 CFR 131.111.

"Acidified milk product" means a product with an acidity of not less than 0.50% expressed as lactic acid, which product is obtained by the addition of food grade acids to pasteurized cream, half-and-half, heavy cream, light cream, lowfat milk, milk, skim milk, or sour cream.

"Acidified sour cream" means "acidified sour cream" as defined in 21 CFR 131.162.

"Adulterated milk" or "adulterated milk product" means any milk, milk product, condensed milk product, or dry milk product which meets one or more of the conditions specified in Section 402 of the Federal Food, Drug and Cosmetic Act, as amended (21 USC 342).

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"Aseptically processed milk" means milk that is hermetically sealed in a container and so thermally processed before or after packaging in conformance with 21 CFR Part 113 and the provisions of this chapter so as to render the product free of microorganisms capable of reproducing in the product under nonrefrigeration conditions of storage and distribution and that is free of viable microorganisms (including spores) capable of causing disease in humans.

"Aseptically processed milk product" means any milk or milk product that is hermetically sealed in a container and so thermally processed before or after packaging in conformance with 21 CFR Part 113 and the provisions of this chapter so as to render the product free of microorganisms capable of reproducing in the product under normal nonrefrigeration conditions of storage and distribution and that is free of viable microorganisms (including spores) capable of causing disease in humans.

"Aseptic processing" means that the product has been subjected to sufficient heat processing and packaged in a hermetically sealed container, to conform to the applicable requirements of 21 CFR Part 113 and the provisions of this chapter and to maintain the commercial sterility of the product under normal nonrefrigerated conditions.

"Audit" means an evaluation of the entire milk plant, receiving station or transfer station facility and HACCP System to ensure compliance with the voluntary HACCP program requirements of this chapter.

"Automatic milking installation" means the entire installation of one or more automatic milking units, including the hardware and software utilized in the operation of individual automatic milking units, the animal selection system, the automatic milking machine, the milk cooling system, the system for cleaning and sanitizing the automatic milking unit, the teat cleaning system, and the alarm systems associated with the process of milking cooling, cleaning and sanitation.

"Boiled custard" means "eggnog" as defined in 21 CFR 131.170.

"Bulk milk hauler" means any person who holds a permit issued by the Virginia Department of Agriculture and Consumer Services to collect official milk samples and transport: (i) raw milk from a dairy farm to a milk plant, receiving station or transfer station; or (ii) raw milk products from one milk plant, receiving station or transfer station to another milk plant, receiving station or transfer station.

"Buttermilk" means the fluid milk product that remains after the manufacture of butter from milk or cream and contains not less than 8.25% of milk solids not fat.

"Cancel" means to permanently nullify, void, or delete a grade A permit issued by the State Regulatory Authority.

"Centralized deviation log" means a centralized log or file identifying data detailing any deviation of critical limits and the corrective actions taken.

"CFR" means the Code of Federal Regulations.

"Clean" means the surfaces of equipment and facilities have had an effective and thorough removal of product, soils, and contaminants.

"Coffee cream" means "light cream."

"Commercially sterile" means (i) the food has been thermally processed by the application of heat to render the food free of viable microorganisms (including spores) of public health significance and microorganisms capable of reproducing in the food under normal nonrefrigerated conditions of storage and distribution; or (ii) the food has been processed with the application of heat and the water activity of the food has been controlled to render the food free of microorganisms capable of reproducing in the food under normal nonrefrigerated conditions of storage and distribution.

"Concentrated milk" means "concentrated milk" as defined in 21 CFR 131.115.

"Concentrated milk product" means any of the following foods: homogenized concentrated milk, homogenized concentrated skim milk, concentrated lowfat milk, concentrated milk, and concentrated skim milk, which when combined with potable water according to the instructions printed on the food's container, conforms to the definition of the corresponding milk product in this chapter.

"Condensed buttermilk" means the product resulting from the removal of a considerable portion of water from buttermilk.

"Condensed and dry milk product" means grade A condensed milk, grade A condensed and dry whey, grade A dry milk product, or grade A dry milk and whey product.

"Condensed milk" means concentrated milk as defined in 21 CFR 131.115. This definition does not include:

1. Any sterilized milk or milk product, when the sterilized milk or milk product is hermetically sealed in a container and processed, either before or after sealing, so as to prevent microbial spoilage; or
2. Any evaporated milk or sweetened condensed milk, except when the evaporated milk or sweetened condensed milk is combined with other substances in the commercial preparation of any pasteurized, ultra-pasteurized, or aseptically processed milk or milk product.

"Condensed whey" means "condensed whey" as defined in 21 CFR 184.1979(a)(2).

"Consumer" means any person who uses any grade A milk, grade A milk product, or milk product.

"Corrective action" means procedures followed when a deviation occurs.

"Cottage cheese" means "cottage cheese" as defined in 21 CFR 133.128.

"Cottage cheese dry curd" means "dry curd cottage cheese."

"Cream" means "cream" as defined in 21 CFR 131.3(a).

"Critical control point" means a step at which control can be applied and is essential to prevent or eliminate a milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product safety hazard or reduce it to an acceptable level.

"Critical limit" means a maximum value or a minimum value to which a biological, chemical, or physical parameter must be controlled at a critical control point to prevent, eliminate, or reduce to an acceptable level the occurrence of a milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product safety hazard.

"Cultured half-and-half" means "sour half-and-half."

"Cultured milk" means "cultured milk" as defined in 21 CFR 131.112.

"Cultured sour cream" means "sour cream."

"Dairy farm" means any place or premises where any cow, goat, sheep, water buffalo, or other mammal (except humans) is kept, from which cow, goat, sheep, water buffalo, or other mammal (except humans) milk or any milk product is provided, sold or offered for sale for human consumption or provided to a milk plant, cheese plant, frozen desserts plant, transfer station, or receiving station.

"Deficiency" means an element that is inadequate or missing from the requirements of a HACCP System or with the voluntary HACCP program requirements of this chapter.

"Deny" means the State Regulatory Authority will not issue a grade A permit to the applicant.

"Deviation" means a failure to meet a critical limit.

"Drug" means: (i) articles recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States, or official National Formulary, or any supplement to any of them; (ii) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; (iii) articles other than food intended to affect the structure or any function of the body of man or other animals; and (iv) articles intended for use as a component of any articles specified in clause (i), (ii), or (iii) of this definition, but does not include devices or their components, parts, or accessories.

"Dry buttermilk" means "dry buttermilk" as defined in 7 CFR 58.251.

"Dry buttermilk product" means "dry buttermilk product" as defined in 7 CFR 58.251.

"Dry cream" means "dry cream" as defined in 21 CFR 131.149.

"Dry curd cottage cheese" means "dry curd cottage cheese" as defined in 21 CFR 133.129.

"Dry milk product" means a product resulting from the drying of any milk or milk product and any product resulting from the combination of a dry milk product with other safe and suitable dry ingredients.

"Dry whey" means "dry whey" as defined in 21 CFR 184.1979.

"Dry whey product" means a product resulting from the drying of whey or whey products and any product resulting from the combination of dry whey products with other wholesome dry ingredients.

"Dry whole milk" means "dry whole milk" as defined in 21 CFR 131.147.

"Eggnog" means "eggnog" as defined in 21 CFR 131.170.

"Eggnog-flavored milk" means a milk product, to which an emulsifier and a maximum of 0.5% stabilizer may have been added consisting of a mixture of (i) at least 3.25% butterfat, (ii) at least 0.5% egg yolk solids, (iii) sweetener, and (iv) flavoring.

"Evaporated milk" means "evaporated milk" as defined in 21 CFR 131.130.

"Flavored milk" means milk to which a flavor or sweetener has been added.

"Flavored milk product" means any milk product to which a flavor or sweetener has been added.

"Fortified milk" means milk, other than vitamin D milk, the vitamin or mineral content of which milk has been increased.

"Fortified milk product" means any milk product, other than a vitamin D milk product, the vitamin or mineral content of which milk product has been increased.

"Frozen milk concentrate" means the frozen milk product which, when water is added in accordance with instructions on the package containing the frozen milk product, the reconstituted milk product contains the percentage of milkfat and the percentage of milk solids not fat of milk.

"Goat milk" means the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy goats which, when sold in retail packages, contains not less than 2.5% milkfat and not less than 7.5% nonfat milk solids not fat.

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"Grade A condensed and dry whey" means condensed or dry whey which complies with the provisions of the "Grade "A" Pasteurized Milk Ordinance, 2005 Revision" and this chapter.

"Grade A condensed milk" means condensed milk which complies with the provisions of the "Grade "A" Pasteurized Milk Ordinance, 2005 Revision" and this chapter.

"Grade A dry milk product" means any dry milk product which complies with the provisions of the "Grade "A" Pasteurized Milk Ordinance, 2005 Revision" and this chapter.

"Grade A dry milk and whey product" means any dry milk or whey product which has been produced for use in any grade A pasteurized, ultra-pasteurized, or aseptically processed milk product; and which has been manufactured under the provisions of the "Grade "A" Pasteurized Milk Ordinance, 2005 Revision" and this chapter.

"Grade A permit" means the written document issued by the state regulatory authority to the person who operates a: (i) dairy farm to produce raw milk for pasteurization, ultra-pasteurization, or aseptic processing; (ii) milk plant; (iii) receiving station; (iv) transfer station; (v) milk condensing plant; (vi) milk drying plant; (vii) whey condensing plant; or (viii) whey drying plant; after the State Regulatory Authority has inspected and approved the person's operation and determined the person's compliance with the provisions of this chapter for the operations specified in this definition.

"HACCP" means hazard analysis critical control point.

"HACCP plan" means the written document, which is based upon the principles of HACCP and delineates the procedures to be followed.

"HACCP system" means the implemented HACCP plan and prerequisite programs, including other applicable requirements of the voluntary HACCP program of this chapter.

"Half-and-half" means "half-and-half" as defined in 21 CFR 131.180.

"Hazard" means a biological, chemical, or physical agent that is reasonably likely to cause illness or injury in the absence of its control.

"Hazard analysis" means the process of collecting and evaluating information on hazards associated with the milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product under consideration, to decide which are reasonably likely to occur and must be addressed in the HACCP plan.

"Heavy cream" means "heavy cream" as defined in 21 CFR 131.150.

"Lactose-reduced lowfat milk" means the product resulting from the addition of safe and suitable enzymes to convert enough lactose to glucose or galactose so that less than 30%

of the lactose remains in the lowfat milk from which the product is made.

"Lactose-reduced milk" means the product resulting from the addition of safe and suitable enzymes to convert enough lactose to glucose or galactose so that less than 30% of the lactose remains in the milk from which the product is made.

"Lactose-reduced skim milk" means the product resulting from the addition of safe and suitable enzymes to convert enough lactose to glucose or galactose so that less than 30% of the lactose remains in the skim milk from which the product is made.

"Light cream" means "light cream" as defined in 21 CFR 131.155.

"Light whipping cream" means "light whipping cream" as defined in 21 CFR 131.157.

"Lowfat yogurt" means "lowfat yogurt" as defined in 21 CFR 131.203.

"Low-sodium lowfat milk" means the milk product resulting from the treatment of lowfat milk by a process of passing the lowfat milk through an ion exchange resin process, or by any other process which has been recognized by the Food and Drug Administration that effectively reduces the sodium content of the product to less than 10 milligrams in 100 milliliters.

"Low-sodium milk" means the milk product resulting from the treatment of milk by a process of passing the milk through an ion exchange resin process, or by any other process which has been recognized by the Food and Drug Administration that effectively reduces the sodium content of the product to less than 10 milligrams in 100 milliliters.

"Low-sodium skim milk" means the milk product resulting from the treatment of skim milk by a process of passing the skim milk through an ion exchange resin process, or by any other process which has been recognized by the Food and Drug Administration that effectively reduces the sodium content of the product to less than 10 milligrams in 100 milliliters.

"Market milk" means milk.

"Market milk product" means milk product.

"Milk" means the whole, fresh, clean lacteal secretion obtained by the complete milking of one or more healthy cows, goats, sheep, water buffalo, or other mammal (except humans) intended for human consumption excluding that obtained before and after birthing, for such a period as may be necessary to render the milk practically colostrum free.

"Milk condensing plant" means any plant in which milk or any milk product is condensed or dried, or in which milk or any milk product is received, separated, or otherwise processed for drying and packaging.

"Milk drying plant" means any plant in which milk or any milk product is condensed or dried, or in which milk or any milk product is received, separated, or otherwise processed for drying and packaging.

"Milkfat" means the fat of milk.

"Milkhouse" means the building or room in which there is conducted on a grade A dairy farm (i) the cooling, handling, and storing of milk and (ii) the washing, sanitizing, and storing of milk containers and utensils.

"Milk plant" means any place, premises, or establishment where any milk or milk product is collected, handled, processed, stored, pasteurized, ultra-pasteurized, aseptically processed, condensed, dried, bottled, or prepared for distribution.

"Milk producer" means any person who operates a dairy farm and who provides, sells, or offers milk for sale for human consumption or to a milk plant, receiving station, or transfer station.

"Milk product" means: (i) acidified lowfat milk, acidified nonfat milk, acidified milk, acidified milk product, acidified reduced fat milk, acidified skim milk, acidified sour cream, acidified sour half-and-half, aseptically processed milk, aseptically processed milk product, buttermilk, coffee cream, concentrated milk, concentrated milk product, cottage cheese, cottage cheese dry curd, cream, cultured half-and-half, cultured milk, cultured lowfat milk, cultured nonfat milk, cultured reduced fat milk, cultured skim milk, cultured sour cream, cultured sour half-and-half, dry curd cottage cheese, eggnog, eggnog-flavored milk, flavored milk, flavored milk product, fortified milk, fortified milk product, frozen milk concentrate, goat milk, half-and-half, heavy cream, heavy whipping cream, lactose-reduced lowfat milk, lactose-reduced nonfat milk, lactose-reduced milk, lactose-reduced reduced fat milk, lactose-reduced skim milk, light cream, light whipping cream, lowfat cottage cheese, lowfat milk, lowfat yogurt, low-sodium lowfat milk, low-sodium nonfat milk, low-sodium milk, low-sodium reduced fat milk, low-sodium skim milk, milk, nonfat milk, nonfat yogurt, recombined milk, recombined milk product, reconstituted milk, reconstituted milk product, reduced fat milk, sheep milk, skim milk, sour cream, sour half-and-half, table cream, vitamin D milk, vitamin D milk product, whipped cream, whipped light cream, whipping cream, or yogurt; (ii) any of the following foods: milk, lowfat milk, or skim milk with added safe and suitable microbial organisms; or (iii) any food made with a food specified in (i) of this definition by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin, or mineral fortification. Nothing in this definition shall be deemed to include any evaporated milk, evaporated skim milk, condensed milk (sweetened or unsweetened), infant formula, ice cream or other dessert, dietary product, dry milk product (except as defined herein), canned eggnog in a rigid metal

container, or butter or cheese, except when butter or cheese is combined with other substances to produce any pasteurized or aseptically processed food as specified in this definition.

"Misbranded milk" or "misbranded milk product" means any milk, milk product, or condensed and dry milk product that: (i) satisfies any of the conditions specified in § 403 of the Federal Food Drug, and Cosmetic Act, as amended (21 USC 343), (ii) does not conform to its definition; or (iii) is not labeled in accordance with 2VAC5-490-40.

"Nonconformity" means a failure to meet specified requirements of the HACCP system.

"Nonfat dry milk" means "nonfat dry milk" as defined in 21 CFR 131.125.

"Nonfat dry milk fortified with vitamins A and D" means "nonfat dry milk fortified with vitamins A and D" as defined in 21 CFR 131.127.

"Nonfat yogurt" means "nonfat yogurt" as defined in 21 CFR 131.206.

"Normal storage" means storage at a temperature of 45°F or cooler, but does not include freezing.

"Official laboratory" means a biological, chemical, or physical laboratory operated by the Commonwealth of Virginia.

"Officially designated laboratory" means: (i) a commercial laboratory authorized by the State Regulatory Authority to examine milk, milk product, condensed and dry milk product, producer samples of Grade "A" raw milk for pasteurization, or commingled milk tank truck samples of raw milk or milk products or (ii) a milk-industry laboratory authorized by the State Regulatory Authority to examine milk producer samples of raw milk for pasteurization, and for drug residues and bacterial limits, samples of raw milk commingled in a tank truck.

"Pasteurization" or "pasteurized" means the process of heating every particle of milk, milk product, or whey in equipment designed and operated in conformance with this chapter, to one of the temperatures given in the following table and held continuously at or above that temperature for at least the corresponding specified time for the equipment indicated:

Temperature	Time	Equipment
145°F*	30 minutes	Vat Pasteurization
161°F*	15 seconds	High Temperature Short Time
191°F	1.0 second	High Temperature Short Time
194°F	0.5 second	High Temperature Short Time

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201°F	0.1 second	High Temperature Short Time
204°F	0.05 second	High Temperature Short Time
212°F	0.01 second	High Temperature Short Time

*If: (i) the fat content of the milk or milk product is 10% or more; (ii) the milk or milk product contains added sweeteners; (iii) the product is condensed milk; or (iv) the milk product is a condensed milk product, then pasteurization means increasing the specified temperature by 5°F.

*If the dairy product is cream for butter-making, then "pasteurization" means heating to at least 165°F and holding continuously in a vat pasteurizer for not less than 30 minutes or pasteurizing by the High Temperature Short Time method at a minimum temperature of not less than 185°F for not less than 15 seconds.

*If the milk product is eggnog, then "pasteurization" means heating to at least the following temperatures for the corresponding time specifications and equipment:

Temperature	Time	Equipment
155°F	30 minutes	Vat Pasteurization
175°F	25 seconds	High Temperature Short Time
180°F	15 seconds	High Temperature Short Time

Nothing in this definition shall be construed as barring any other process which has been recognized by the Food and Drug Administration as being equally efficacious as pasteurization, so long as that other process has been approved by the State Regulatory Authority.

"Person" means any individual, plant operator, partnership, corporation, company, firm, trustee, or institution.

"Prerequisite programs" means procedures, including Good Manufacturing Practices, that address operational conditions that provide the foundation for the HACCP system.

"Public" means any person in the Commonwealth.

"Pull date" means the date affixed to a consumer package or container of grade A pasteurized milk or grade A pasteurized milk product which is the date after the day of manufacturing and processing of the package or container and the last day on which the grade A pasteurized milk or grade A pasteurized milk product as determined by the milk plant may be offered for sale to consumers under normal storage.

"Raw milk" means: (i) any milk or any milk product which has not been pasteurized, ultra-pasteurized, or aseptically processed; or (ii) any milk or any milk product which has

been pasteurized, ultra-pasteurized, or aseptically processed and which has been exposed to microbiological contamination before, during, or after packaging.

"Receiving station" means any place, premises, or establishment where raw milk is: (i) received, collected, handled, stored, or cooled; and (ii) prepared for further transporting.

"Recombined milk" means the food which, when combined with potable water according to the instructions printed on the food's container, conforms to the milk fat and nonfat milk solids requirements for milk, as specified in the definition of "milk."

"Recombined milk product" means the food which, when combined with potable water according to the instructions printed on the food's container, conforms to the milk fat and milk nonfat solids requirements for the milk product designated on the food's container.

"Reconstituted milk" means "recombined milk."

"Reconstituted milk product" means "recombined milk product."

"Reduced lactose whey" means "reduced lactose whey" as defined in 21 CFR 184.1979a.

"Reduced minerals whey" means "reduced minerals whey" as defined in 21 CFR 184.1979b.

"Revoke" means to permanently annul, repeal, rescind, countermand, or abrogate a Grade A permit issued by the State Regulatory Authority.

"Safe and suitable" means "safe and suitable" as defined in 21 CFR 130.3(d).

"Sanitization" means the application of any effective method or substance to a clean surface for the destruction of pathogens, and of other organisms as far as is practicable, and when used does not adversely affect: (i) the equipment which comes in contact with milk, milk product, or condensed and dry milk product; (ii) the milk, milk product, or condensed and dry milk product; or (iii) the health of consumers.

"Septage" means material accumulated in a pretreatment system or privy.

"Sewage" means water-carried and nonwater-carried human excrement; kitchen, laundry, shower, bath, or lavatory wastes separately or together with such underground, surface, storm and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other places.

"Sheep milk" means the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy sheep.

"Sour cream" means "sour cream" as defined in 21 CFR 131.160.

"State Regulatory Authority" means the Commissioner of Agriculture and Consumer Services or his agent when carrying out any duty specified in § ~~3.1-530.3~~ 3.2-5207 of the Code of Virginia or the State Health Commissioner or his agent when carrying out any duty specified in § ~~3.1-530.4~~ 3.2-5208 of the Code of Virginia.

"Suspend" means to temporarily nullify, void, debar, or cease for a period of time a grade A permit issued by the State Regulatory Authority.

"Sweetened condensed milk" means "sweetened condensed milk" as defined in 21 CFR 131.120.

"Table cream" means "light cream" as defined in 21 CFR 131.155.

"Transfer station" means any place, premises, or establishment where milk or milk products are transferred directly from one milk tank truck to another.

"Trim" means to shorten the hair on the udder and tail of milking cows and goats by clipping, singeing, cutting, or other means.

"Ultra-pasteurized" means, when used to describe any milk or milk product, that the milk or milk product has been thermally processed at a temperature of 280°F (138°C) or hotter for at least two seconds, either before or after packaging, so as to produce a product that has an extended shelf life under normal storage.

"Validation" means the element of verification focused on collecting and evaluating scientific and technical information to determine whether the HACCP plan, when properly implemented, will effectively control the hazards.

"Verification" means those activities, other than monitoring, that determine the validity of the HACCP plan and that the HACCP system is operating according to the plan.

"Vitamin A milk" means milk, the vitamin A content of which has been increased to at least 2000 International Units per quart.

"Vitamin A milk product" means a milk product, the vitamin A content of which has been increased to at least 2000 International Units per quart.

"Vitamin D milk" means milk, the vitamin D content of which has been increased to at least 400 International Units per quart.

"Vitamin D milk product" means a milk product, the vitamin D content of which has been increased to at least 400 International Units per quart.

"Water buffalo milk" means the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy water buffalo.

"Whey" means "whey" as defined in 21 CFR 184.1979.

"Whey condensing plant" means a plant in which whey is condensed or in which whey is received and processed for drying and packaging.

"Whey drying plant" means a plant in which whey is dried or in which whey is received and processed for drying and packaging.

"Whey product" means any fluid product removed from whey, or made by the removal of any constituent from whey, or by the addition of any wholesome substance to whey or parts thereof.

"Whipped cream" means "heavy cream" as defined in 21 CFR 131.150 or "light whipping cream" as defined in 21 CFR 131.157, into which air or gas has been incorporated.

"Whipped light cream" means "light whipped cream" as defined in 21 CFR 131.155, into which air or gas has been incorporated.

"Whipping cream" means "light whipping cream" as defined in 21 CFR 131.157.

"Yogurt" means "yogurt" as defined in 21 CFR 131.200.

2VAC5-490-31. Authority to cancel, suspend, revoke or deny a permit.

A. The State Regulatory Authority may cancel, suspend, or revoke the grade A permit of any person, or may deny to any person a grade A permit if:

1. The grade A permit holder fails to engage daily in the business for which the grade A permit is issued;
2. The grade A permit holder does not daily produce, provide, manufacture, sell, offer for sale, or store in the Commonwealth, or bring, send, or receive into the Commonwealth milk, milk product, condensed milk product or dry milk product;
3. The grade A permit holder fails to provide at no cost to the State Regulatory Authority samples of milk, milk product, condensed milk product and dry milk product in the person's possession for testing by the State Regulatory Authority;
4. The grade A permit holder fails to provide on a daily basis milk, milk product, condensed milk product or dry milk product in the person's possession for sampling and testing by the State Regulatory Authority;
5. The grade A permit holder fails to comply with any requirement of this chapter, or of §§ ~~3.1-420 through 3.1-424~~, §§ ~~3.1-530.1 through 3.1-530.11~~ or §§ ~~3.1-531.1~~

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~~through 3.1-545.1 §§ 3.2-5200 through 3.2-5211 or 3.2-5218 through 3.2-5233~~ of the Code of Virginia;

6. A public health hazard exists that affects the grade A permit holder's milk, milk product, condensed milk product or dry milk product;

7. The grade A permit holder or any agent of the grade A permit holder has obstructed or interfered with the State Regulatory Authority in the performance of its duties;

8. The person supplies false or misleading information to the State Regulatory Authority: (i) in the person's application for a grade A permit; (ii) concerning the identity of the person who will control the facility that is the subject of the grade A permit; (iii) concerning the amount of milk, milk product, condensed milk product or dry milk product which the person produces, provides, manufactures, sells, offers for sale, or stores in the Commonwealth, or brings, sends, or receives into the Commonwealth and the distribution of the person's milk, milk product, condensed milk product or dry milk product; (iv) concerning any investigation conducted by the State Regulatory Authority; or (v) concerning the location of any part of the person's operation that is subject to a grade A permit;

9. The grade A permit holder engages in fraudulent activity regarding: (i) the amount of milk, milk product, condensed milk product or dry milk product the person offers to sell or sells; or (ii) the collection of samples of the person's milk, milk product, condensed milk product or dry milk product used to determine compliance with any provision of this chapter or as a basis for payment for milk, milk product, condensed milk product or dry milk product;

10. Three of the most recent five bacteria counts, somatic cell counts, or cooling temperature determinations conducted on the grade A permit holder's raw milk exceed the standards specified in this chapter;

11. Three of the most recent five bacteria counts, coliform determinations, or cooling temperature determinations conducted on the grade A permit holder's milk, milk product, condensed milk product or dry milk product exceed the standards specified in this chapter;

12. Two of the most recent cryoscope tests on the grade A permit holder's milk violate the standard specified in this chapter and the most recent violative sample occurred within two years of the next most recent violative sample;

13. The most recent aflatoxin or drug residue test on the grade A permit holder's milk, milk product, condensed milk product or dry milk product violates the standards specified in this chapter.

14. The most recent phosphatase test on the grade A permit holder's milk, milk product, condensed milk product or dry milk product violates the standard specified in this chapter;

15. The most recent chemical residue test or pesticide residue test on the grade A permit holder's milk, milk product, condensed milk product or dry milk product exceeds the actionable level, tolerance level, or safe level for any chemical residue or pesticide residue specified in: 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, 589. In the event that no actionable level, tolerance level, or safe level for a chemical residue or pesticides residue has been established in: 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, 589, the tolerance level shall be deemed to be zero;

16. The grade A permit holder fails to correct any: (i) violation of this chapter documented as a result of an inspection or (ii) deficiency or nonconformity documented as a result of a HACCP audit that the State Regulatory Authority has cited in a written notice of intent to suspend the person's grade A permit, as a violation of this chapter;

17. The grade A permit holder's raw milk for pasteurization is warmer than 50°F two hours after the completion of the first milking or the grade A permit holder's raw milk for pasteurization is warmer than 50°F during or after any subsequent milking;

18. The grade A permit holder's equipment is covered or partially covered by an accumulation of milk solids, milk fat, or other residue so that the milk, milk product, condensed milk product or dry milk product is adulterated;

19. The grade A permit holder sells or offers for sale milk, milk products, condensed milk product or dry milk product which violate any requirement of this chapter;

20. The grade A permit holder's permit is suspended three times within a 12-month period;

21. The authority in another state responsible for issuing grade A permits has denied, suspended, or revoked the permit of the person in that state for any act or omission that would violate this chapter or the statutes under which this chapter was adopted, had the act or omission occurred in the Commonwealth; or

22. The Virginia Department of Agriculture and Consumer Services has previously revoked the person's grade A permit.

B. The State Regulatory Authority may summarily suspend a grade A permit for violation of any of the following subdivisions of subsection A of this section: 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, or 19.

C. The State Regulatory Authority may suspend from sale any condensed milk, condensed milk product, dry milk, dry milk product, milk or milk product in violation of the requirements of this chapter processed by any grade A dairy

plant permit holder in lieu of suspending the grade A dairy plant permit holder's permit.

D. If the State Regulatory Authority suspends a permit holder's permit more than three times within any 12-month period, the permit holder's permit shall not be reinstated for a period of three days on the fourth suspension within any 12-month period and six days on the fifth suspension within any 12-month period with three days being added to the required suspension period for each additional suspension thereafter within any 12-month period.

E. If the State Regulatory Authority issues two written notices of intent to suspend a person's permit for failure to correct the same deficiency within any 12-month period, the State Regulatory Authority may issue and enforce a written notice of intent to summarily suspend the person's permit at any time within six months after the date the written notice of intent to summarily suspend is issued, to summarily suspend the person's permit if the same violation exist on any inspection during the six-month period specified in the written notice of intent to summarily suspend.

VA.R. Doc. No. R09-1714; Filed January 13, 2009, 11:26 a.m.

Final Regulation

Title of Regulation: 2VAC5-501. Regulations Governing the Cooling, Storing, Sampling and Transporting of Milk (amending 2VAC5-501-30, 2VAC5-501-60, 2VAC5-501-70).

Statutory Authority: §§ 3.2-5206, 3.2-5223 and 3.2-5224 of the Code of Virginia.

Effective Date: March 4, 2009.

Agency Contact: Roy E. Seward, Jr., Regulatory Coordinator, Department of Agriculture and Consumer Services, Oliver W. Hill, Sr., Building, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-3535, FAX (804) 371-7679, or email roy.seward@vdacs.virginia.gov.

Summary:

The amendments update citations to reflect the recodification of Title 3.1 to Title 3.2 of the Code of Virginia, which became effective October 1, 2008.

2VAC5-501-30. Permits.

A. It shall be unlawful for any person who does not possess a permit from the state regulatory authority of the Commonwealth of Virginia to: (i) operate a bulk milk pickup tanker; (ii) sample, measure, and collect milk from farm bulk milk cooling or holding tanks; (iii) sample, measure, or receive milk in cans or containers into any milk plant, receiving station, or transfer station; (iv) possess or transport official milk samples; (v) collect official milk samples from bulk milk pickup tankers or milk transport tanks; or (vi) collect official milk samples of pasteurized milk or pasteurized milk products from a milk plant. Each person

shall pass a test as prescribed by the state regulatory authority. Qualifications of such persons shall be those set forth by laws, regulations, and procedures prescribed by the state regulatory authority. All such permits shall expire on December 31 next following the date of issuance. All such permits shall be renewed without further examination if the permit holder renews his permit within one year after the permit's expiration date. No permit to operate a bulk milk pickup tanker to sample, measure, and collect milk from farm bulk milk cooling or holding tanks shall be renewed without the applicant satisfactorily passing a test as prescribed by the state regulatory authority if the applicant did not renew his permit within one year after it expired. Each bulk milk sampler shall be evaluated by the state regulatory authority at least once during the first year after his permit is issued and a minimum of once every two years thereafter as a condition of permit renewal. It shall be the responsibility of each bulk milk sampler to ensure he is available to be evaluated by the state regulatory authority.

B. It shall be unlawful for any person who does not possess a permit from the state regulatory authority of the Commonwealth of Virginia to operate a milk tank truck cleaning facility. Each milk tank truck cleaning facility shall be inspected and determined to be in compliance with all requirements of this chapter by the state regulatory authority prior to permit issuance. All such permits shall expire on December 31 next following the date of issuance.

C. Each contract hauler and subcontract hauler shall obtain a permit from the state regulatory authority in order to contract for the hauling of milk from a dairy farm to a milk plant or transfer station. Each contract hauler and subcontract hauler shall also obtain a permit from the state regulatory authority for each bulk milk pickup tanker and each milk transport tank they operate. Each bulk milk pickup tanker and each transport tank shall be identified by a five-digit number preceded by the letters "VA". The first two digits of the five-digit number shall identify the contract hauler or subcontract hauler as assigned by the state regulatory authority and the last three digits of the five-digit number shall identify the specific bulk milk pickup tanker or transport tank as assigned by the state regulatory authority. Each contract hauler and subcontract hauler shall identify each bulk milk pickup tanker and transport tank on the left hand side of the rear bulkhead of each tank with permanent, water resistant letters and numbers. Each contract hauler and subcontract hauler shall use only letters and numbers to identify a bulk milk pickup tanker or milk transport tank that are at least three inches tall and one-and-one-half inches wide. Each contract hauler and subcontract hauler shall provide the state regulatory authority with the name of the manufacturer, year made, model number, capacity, serial number, number of compartments, whether the tanker is a bulk milk pickup tanker or milk transport tank, delivery address, mailing address, telephone, and contact information for each bulk milk pickup tanker and

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milk transport tank for permitting purposes. Permits for contract haulers, subcontract haulers, bulk milk pickup tankers, and milk transport tanks shall expire on December 31 next following the date of issuance and shall be renewed annually.

D. It shall be unlawful for any person who does not possess a permit from the state regulatory authority of the Commonwealth of Virginia to operate a pay purpose laboratory or to test milk for pay purposes. Each person employed by a pay purpose laboratory who is involved in testing milk for pay purposes shall pass a test as prescribed by the state regulatory authority. Qualifications of such persons shall be those set forth by laws, regulations, and procedures prescribed by the state regulatory authority. All such permits shall expire on December 31 next following the date of issuance and shall be renewed annually. All such permits shall be renewed without further examination if the permit holder renews within one year after the permit's expiration date.

E. Only a person who complies with this chapter shall be entitled to receive and retain such a permit. Permits or identification numbers shall not be transferable with respect to persons, equipment, or locations.

F. The state regulatory authority may cancel, suspend, or revoke the permit of any person, or may deny to any person a permit if:

1. It has reason to believe that a public health hazard exists;
2. The permit holder fails to engage daily in the business for which the permit was issued;
3. The permit holder was not evaluated by the state regulatory authority if required for permit renewal;
4. The permit holder fails to comply with any requirement of this chapter, or of ~~§§ 3.1-420 through 3.1-424, §§ 3.1-530.1 through 3.1-530.10, §§ 3.1-531.1 through 3.1-542, or §§ 3.1-544 through 3.1-545.1~~ §§ 3.2-5200 through 3.2-5210 or 3.2-5218 through 3.2-5233 of the Code of Virginia;
5. The permit holder has interfered with the state regulatory authority in the performance of its duties;
6. The person supplies false or misleading information to the state regulatory authority: (i) in the person's application for a permit; (ii) concerning the identity of the person who will control the business or equipment that is the subject of the permit; (iii) concerning the amount of milk, milk product, or dairy product that the person weighs, samples, tests, or transports; (iv) concerning the distribution of the person's milk, milk product, or dairy product; (v) concerning any investigation conducted by the state regulatory authority; or (vi) concerning the location of any part of the person's operation or equipment that is subject to a permit;

7. The permit holder engages in fraudulent activity regarding: (i) the amount of milk, milk product, or dairy product the person weighs, samples, tests, or transports; (ii) the collection of samples used to determine compliance with any provision of 2VAC5-490, 2VAC5-530, or this chapter; or (iii) the collection or testing of samples used for pay purposes;

8. The permit holder fails to correct any deficiency that the state regulatory authority has cited in a written notice of intent to suspend the person's permit, as a violation of this chapter; or

9. The authority in another state responsible for issuing permits to contract haulers, subcontract haulers, bulk milk haulers, bulk milk samplers, dairy plant samplers, transporters of official samples, pay purpose laboratories, or testers of milk samples for pay purposes has suspended, or revoked the permit of the person in that state for any act or omission that would violate this chapter or the statutes under which this chapter was adopted, had the act or omission occurred in the Commonwealth.

G. The state regulatory authority may summarily suspend the permit of any person for violation of subdivisions F 1 or F 8 of this section.

H. Each bulk milk sampler and bulk milk hauler shall ensure that one complete set of milk samples representing each of the milk pickups on each load of farm pickup milk in his possession shall accompany the load to its destination. No person may remove the last complete set of milk samples from a bulk milk pickup tanker prior to its delivery to a milk plant, receiving station, or transfer station.

I. Each person who holds a permit to produce milk shall store a minimum of the past 30 days bulk milk pickup tickets in his milkroom for use by the state regulatory authority if he ships his milk by bulk shipment.

J. Each person who operates a dairy farm shall abstain from selling any milk from his dairy farm after his milk tests positive for excessive drug residues until notified by the state regulatory authority that a followup official milk sample taken from his milk supply tested negative for excessive drug residues.

K. To provide for permitting reciprocity between states, the state regulatory authority may issue a Virginia permit to any bulk milk hauler or bulk milk sampler who holds a valid permit issued by the regulatory authority in another state without that person having to take or pass a test in Virginia if the person will be picking up or sampling milk in Virginia.

L. Each person who operates a dairy farm shall use only a farm bulk milk pickup tanker or milk transport tanker for direct loading and storage of milk on his dairy farm if: (i) the milk tank truck is equipped with a means to collect representative milk samples approved by the state regulatory

authority at his dairy farm; (ii) the milk tank truck is always delivered to the same milk plant in Virginia where a representative milk sample may be obtained by the state regulatory authority or (iii) the operator of the dairy farm arranges for official milk samples to be collected and delivered to a laboratory operated by the state regulatory authority.

M. Each bulk milk hauler, bulk milk sampler, contract hauler, and subcontract hauler who transports any pasteurized milk, pasteurized milk product, pasteurized dairy product, or pasteurized frozen dessert mix shall use only a milk tank truck that is dedicated solely to transport or hold pasteurized milk, pasteurized milk product, pasteurized dairy product, or pasteurized frozen dessert mix if the pasteurized milk, pasteurized milk product, pasteurized dairy product, or pasteurized frozen dessert mix will not be repasteurized in the milk plant receiving the pasteurized milk, pasteurized milk product, pasteurized dairy product, or pasteurized frozen dessert mix prior to being packaged for sale.

2VAC5-501-60. Construction and operation of farm bulk milk cooling or holding tanks, recording thermometers, interval timing devices, and other required milkhouse or milkroom facilities.

A. Each person who operates a dairy farm and installs one or more farm bulk cooling or holding tanks in his milkhouse shall provide the following facilities:

1. A milk hose port opening no larger than eight inches in diameter through a wall in the milkhouse closest to the area the bulk milk pickup tanker will be parked to receive the milk from each farm bulk cooling or holding tank;
2. The hose port shall be provided with a self-closing door which shall open to the outside;
3. The hose port shall be of sufficient height above the milkhouse floor and the outside apron to prevent flooding or draining of the milkhouse;
4. An outside apron constructed of concrete or other equally impervious material shall be provided on the outside of the milkhouse directly beneath the hose port to protect the milk-conducting equipment from contamination;
5. Each outside apron shall be a minimum of four inches thick if constructed of concrete and measure a minimum of two feet by two feet horizontally;
6. Each outside apron constructed of a material other than concrete shall measure a minimum of two feet by two feet horizontally;
7. A 220-volt grounded weatherproof electrical outlet installed on the outside of the milkroom or milkhouse near the hoseport for the bulk milk hauler's use to power the milk pump on the bulk milk pickup tanker; and

8. A switch to control the electrical power to the 220-volt grounded weatherproof electrical outlet located on the inside of the milkroom or milkhouse near the outlet to the farm bulk cooling or holding tank.

B. Each person who operates a dairy farm and installs one or more farm bulk cooling or holding tanks in his milkhouse or milkroom shall comply with the following requirements:

1. Each farm bulk cooling or holding tank shall comply with all the requirements contained in:
 - a. 3-A Sanitary Standards for Farm Milk Cooling and Holding Tanks, Document No. 13-09 (Nov. 1993); or
 - b. 3-A Sanitary Standards for Farm Milk Storage Tanks, Document No. 30-01 (Sept. 1984);
2. Each farm bulk cooling or holding tank shall be equipped with an indicating thermometer accurate to plus or minus 2.0°F and capable of registering the temperature of the milk in the tank before it reaches 10% of the tank's volume;
3. Each farm bulk cooling or holding tank shall be installed to comply with the following minimum clearance distances around, above, and below each farm bulk cooling or holding tank:
 - a. Three feet measured horizontally between a wash vat and the outermost portion of any farm bulk cooling or holding tank;
 - b. Three feet measured horizontally in a 180-degree arch from the front of the tank where the outlet valve is located;
 - c. Two feet measured horizontally from the sides and rear of any farm bulk cooling or holding tank to any wall, shelves, water heater, hand-basin, or other object;
 - d. Eighteen inches measured horizontally from the outermost portion of any farm bulk cooling or holding tank to any floor drain and the floor drain shall not be located underneath the tank;
 - e. Three feet measured vertically from the top of the manhole cover of any farm bulk cooling or holding tank to the ceiling;
 - f. Eight inches measured vertically from the floor underneath the bottom of any round farm bulk cooling or holding tank that measures greater than 72 inches in diameter;
 - g. Four inches measured vertically from the floor underneath the bottom of any round farm bulk cooling or holding tank that measures equal to or less than 72 inches in diameter; and

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- h. Six inches measured vertically from the floor underneath the bottom of any flat bottom farm bulk cooling or holding tank;
4. Farm bulk cooling or holding tanks installed through a milkroom wall shall meet the following minimum requirements:
- The area between the farm bulk cooling or holding tank and the wall shall be tightly sealed;
 - All vents and openings on the farm bulk cooling or holding tank located outside the milkroom shall be protected from dust, insects, moisture, and other debris which might enter the tank;
 - All agitators located outside the milkroom shall be equipped with a tightly fitting seal between the bottom of the agitator motor and the top of the farm bulk cooling or holding tank;
5. Each person who operates a dairy farm shall ensure that each farm bulk cooling or holding tank is installed with a foundation of sufficient strength to support the tank when it is full;
6. Each person who operates a dairy farm shall obtain prior approval from the state regulatory authority for each farm bulk cooling or holding tank and its installation before it is installed on the person's dairy farm; and
7. Each person who operates a dairy farm shall ensure each farm bulk cooling or holding tank on his farm is installed, gauged, and a volume chart prepared in compliance with § ~~3-1-941-1~~ 3.2-5260 of the Code of Virginia. Each farm bulk cooling or holding tank and any gauge rod, surface gauge, gauge, or gauge tube and calibration chart associated with it shall be identified by serial number in a prominent manner.
- C. Each person who holds a grade "A" dairy farm permit and installs a farm bulk cooling or holding tank shall comply with the following:
- Each farm bulk cooling or holding tank shall be equipped with a recording thermometer;
 - Each recording thermometer shall be installed to comply with the following:
 - Each recording thermometer shall be installed in the milkhouse;
 - No recording thermometer may be installed on or attached to a farm bulk cooling or holding tank;
 - Each recording thermometer shall be installed: (i) on an inside wall of the milkhouse; (ii) on an outside wall of the milkhouse or milkroom if installed with one inch of rigid insulation between the back of the recording thermometer and the surface of the outside wall; or (iii) on metal brackets from the ceiling or floor;
 - Each recording thermometer sensor shall be installed on the farm bulk cooling or holding tank to record the temperature of the milk in the tank before the milk reaches 10% of the tank's volume;
3. Standards for recording thermometers. Each recording thermometer installed on a farm bulk cooling or holding tank shall comply with the following minimum requirements:
- The case for each recording thermometer shall be moisture proof under milkhouse conditions;
 - The case for each recording thermometer shall be UL rated NEMA 4X enclosure or equivalent as provided in ANSI/NEMA 250, Enclosures for Electrical Equipment (1000 Volts Maximum) dated August 30, 2001;
 - The case for each recording thermometer shall be equipped with a corrosion-resistant latching mechanism that keeps the recording thermometer tightly closed;
 - The recorder chart for each recording thermometer shall not exceed a maximum chart rotation time of 48 hours. Recorder charts for farm bulk cooling or holding tanks that are picked up every other day shall have a chart rotation time of 48 hours. Recorder charts for farm bulk cooling or holding tanks that are picked up every day may have a chart rotation time of 24 or 48 hours;
 - The recorder chart for each recording thermometer shall be marked with water resistant ink;
 - The scale on the recording chart shall cover a minimum of 30°F to 180°F, with the scale reversed to show cold temperatures at the outside of the chart for best resolution;
 - Each division on the recording chart shall represent a maximum of 1.0°F between 30°F and 60°F, with two degree divisions between 60°F and 180°F;
 - Spacing of divisions on the recorder chart shall be a minimum of 0.040 inches per 2.0°F, with the ink line easily distinguishable from the printed line;
 - The recording thermometer speed of response or sensing of temperature shall be a maximum of 20 seconds;
 - The recording thermometer shall be accurate to plus or minus 2.0°F;
 - The sensor for each recording thermometer shall be: (i) a resistance temperature detector (RTD) type sensor; (ii) constructed of stainless steel type 304 or type 316 on all exterior surfaces; (iii) hermetically sealed; (iv) accurate to 0.3°C; and (v) continuous run wire;
1. Each recording thermometer and sensor shall be calibrated and supplied as a package;

m. No capillary system containing any toxic gas or liquid shall be allowed to come into direct contact with any milk or milk product;

n. Other recording devices may be accepted by the state regulatory authority if they comply with the requirements of subdivisions 3 a through m of this subsection;

o. If a strip chart style recorder is used, it shall move not less than one inch per hour, and may be continuous for a maximum of 30 days; and

p. Recording thermometers may be manually wound or electrically operated;

4. Recording thermometer operation: Each recording thermometer installed on a farm bulk cooling or holding tank shall comply with the following minimum operating requirements:

a. Each recording thermometer shall be provided with a means to seal the calibration and zeroing mechanism to provide evidence of unauthorized adjustment or tampering;

b. Each recording thermometer shall be provided with a pin in the hub to prevent the recording chart from being rotated; and

c. Each recording thermometer shall be properly grounded and short circuit protected;

5. Each person who operates a dairy farm and installs a recording thermometer on his farm bulk cooling or holding tank shall maintain a minimum of a 30-day supply of unused recorder charts designed for the specific recording thermometer he installed and maintain a minimum of the past 60 days of used charts for purposes of inspection;

6. Each person who operates a dairy farm and installs a recording thermometer on his farm bulk cooling or holding tank shall provide a moisture proof storage container in the milkhouse or milkroom for purpose of storing a supply of new charts and a minimum of 60 days of used charts;

D. No person may remove from the dairy farm any recorder chart that has been used once and removed from the recorder within the past 60 days unless he has obtained permission from the state regulatory authority. All recorder charts removed from any dairy farm by any person other than a representative of the state regulatory authority shall be returned to the dairy farm within ten days. All recorder charts shall be available to the state regulatory authority.

E. Handling of recording charts. Each bulk milk hauler shall comply with the following requirements when picking up milk from a dairy farm if the farm bulk cooling or holding tank is equipped with a recording thermometer:

1. Each milk hauler, in making a milk pickup, shall properly agitate the milk and remove the chart from the recorder;

2. Each milk hauler shall record the following information on each chart removed from the recorder:

a. The date and time of pickup; and

b. The signature of the milk hauler;

3. Each milk hauler shall store the used chart in the storage container supplied by the dairy farmer;

4. Each milk hauler shall obtain a new chart from the supply provided by the dairy farmer and record the following information in the chart:

a. The date; and

b. The patron number of the dairy farmer;

5. If a recorder chart is used for more than one pickup, each milk hauler shall identify each lot of milk on the chart with the date, time of pickup, and his signature;

6. Before removing any milk from the farm tank, each milk hauler shall check the recorder chart. If the recorder chart indicates that the milk temperature has varied in a manner that would preclude acceptance, he shall immediately notify his superior and the dairy farmer. If the milk is rejected, each milk hauler shall record this information on the chart. If the milk is picked up, each milk hauler shall sign the chart and record the date and time of pickup;

F. Maintenance of recording thermometers. Each person who operates a dairy farm and holds a grade "A" dairy farm permit shall be responsible for maintaining each of his recording thermometers in good repair and adjustment to include calibrating the recording thermometer to read accurately within plus or minus 2.0°F of the actual milk temperature in the farm bulk cooling or holding tank.

G. Sealing of recording thermometers: Each recording thermometer installed on a farm bulk cooling or holding tank shall be inspected and may be sealed by the state regulatory authority after it has been shown to be properly installed and calibrated.

H. Each person who holds a grade "A" dairy farm permit and installs a farm bulk cooling or holding tank shall:

1. Install on each farm bulk cooling or holding tank an interval timing device that automatically agitates the milk in the farm bulk tank for not less than five minutes every hour during the entire time milk is being cooled or stored in the tank;

2. Not install a manual switch capable of turning off the interval timing device on any farm bulk milk cooling or holding tank while any milk is being cooled or stored; and

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3. Maintain in good repair and operating condition each interval timing device installed on his farm bulk cooling or holding tank.

2VAC5-501-70. Measuring, sampling, and testing.

A. Quantity measurements. Each person who determines the quantity of milk in any lot of milk being picked up on any dairy farm in Virginia shall comply with one of the following:

1. If the milk is being picked up from a farm bulk cooling or holding tank, the person shall use only a measuring rod, gauge, or gauge tube accurately calibrated to the individual farm bulk cooling or holding tank and the accompanying calibration chart with a serial number that matches the serial number for the specific farm bulk cooling or holding tank for which it was prepared;

2. If the milk being picked up is not stored in a farm bulk cooling or holding tank, the person shall determine the quantity of milk at the point of delivery to the milk plant processing the milk by commingling all of the milk in a vessel equipped with a gauge rod, surface gauge, gauge, or gauge tube and a volume chart that has been prepared in compliance with § ~~3.1-941.1~~ 3.2-5620 of the Code of Virginia;

3. If the milk being picked up is not stored in a farm bulk cooling or holding tank and the basis for payment for the milk will be based solely on the volume of milk in gallons, the person shall determine the quantity of milk by adding the volume in gallons of each separate full container and the volume in gallons of any milk in containers that are not full; or

4. If the milk being picked up is not stored in a farm bulk cooling or holding tank and the basis for payment for the milk will be based solely on the pounds of milk delivered, the person shall determine the quantity of milk in pounds by weighing each of the containers of milk on a commercial scale before and after they have been emptied and subtracting the weight of the empty containers from the total weight of the containers and the milk, the difference being the weight in pounds of milk.

B. Each person who desires to convert a volumetric measurement of milk to weight in pounds of milk shall multiply the volume of milk in gallons by 8.60.

C. Each person who operates a dairy farm and transports any milk in cans or other containers from his dairy farm to a milk plant and intends to determine the basis for payment of his milk based solely on its volume in gallons or solely on its weight in pounds, shall ensure the cans or other containers comply with the following:

1. Each container shall be provided with a visual means to measure the volume of milk in the container in divisions of one or more whole gallons up to the total capacity of the container;

2. Each container shall be equipped with a tightly fitting lid that prevents any milk from leaking out around the closure;

3. Each container shall be manufactured from stainless steel, food grade plastic, or tinned metal;

4. No container shall be manufactured from glass or other easily breakable material;

5. Each container shall be smooth and easily cleanable; and

6. Each container shall be equipped with an opening large enough to allow the container to be washed by hand if it is intended to be washed by hand or washed by mechanical means if it is intended to be washed by mechanical means.

D. Each person who operates a pay purpose laboratory shall:

1. Provide a separate room of sufficient size in which pay purpose testing shall be conducted;

2. Provide lighting of at least 20 foot-candles when measured at work bench levels and at all other work areas used to conduct testing;

3. Provide adequate ventilation sufficient to prevent condensation from forming and to prevent noxious or hazardous chemical fumes from collecting in the laboratory;

4. Provide heating and cooling equipment sufficient to maintain a constant room temperature of 70°F plus or minus 2.0°F in his laboratory at all times;

5. Provide a separate permanently installed hand-washing facility with hot and cold running water under pressure supplied through a mix valve, soap, and single service paper towels;

6. Provide only potable water under pressure in his laboratory;

7. Provide walls that are constructed of impervious material with a light-colored material and that are easily cleanable;

8. Provide floors made of concrete or other equally impervious material that are easily cleanable;

9. Provide toilet facilities for his employees;

10. Use only methods and equipment approved by the state regulatory authority to test milk for protein, solids, solids not fat, and fat;

11. Construct the facility to insure that the laboratory environment has a stable electrical supply, water supply, stable heating and cooling, and stable ventilation to allow a constantly controllable environment for pay purpose testing procedures and pay purpose equipment; and

12. Dispose of all liquid, solid, and gaseous wastes in a manner that complies with state and federal requirements for waste disposal.

E. Sampling. Each bulk milk hauler shall:

1. Collect at least two representative samples from each bulk milk cooling or holding tank each time that milk is picked up from the dairy farm for use as official milk samples;
2. Collect a minimum of four ounces of milk for each official milk sample collected;
3. Maintain custody of all official milk samples collected or transfer custody of all official milk samples collected to another permitted bulk milk hauler, bulk milk sampler, or at the discretion of the state regulatory agency, lock all official milk samples in a suitable container in which they may be transported or stored;
4. Pickup all of the milk in each farm bulk cooling or holding tank each time that milk is picked up from the farm bulk cooling or holding tank; and
5. Pick up only milk that is 45°F or cooler, but not frozen.

F. Butterfat testing. Each person who desires to determine the butterfat content of milk as a basis for payment shall:

1. Select from each dairy farm supplying them with milk a minimum of four milk samples taken at irregular intervals each month and utilize only laboratory butterfat test results from milk samples that have been tested within 48 hours of collection for pay purposes; or
2. Collect a representative sample from each shipment of each producer supplying them with milk for a maximum of 16 days, if composite milk samples are used to determine butterfat content;
3. Store composite milk samples only in an approved milk laboratory that will perform the butterfat test;
4. Preserve all composite milk samples with an appropriate preservative designed to prevent the spoilage of milk and that will not affect the butterfat test; and
5. Test each composite milk sample within three days following the end of the number of days used to create the composite milk sample.

VA.R. Doc. No. R09-1715; Filed January 13, 2009, 11:27 a.m.

Final Regulation

Title of Regulation: 2VAC5-570. Rules and Regulations Defining Standards for Grades/Sizes of Shell Eggs (amending 2VAC5-570-70).

Statutory Authority: §§ 3.2-5302 and 3.2-5311 of the Code of Virginia.

Effective Date: March 4, 2009.

Agency Contact: James A. Morano, Review and Compliance Officer, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-

3520, FAX (804) 371-7792, TTY (800) 828-1120, or email james.morano@vdacs.virginia.gov.

Summary:

The amendments update citations to reflect the recodification of Title 3.1 to Title 3.2 of the Code of Virginia, which became effective October 1, 2008.

2VAC5-570-70. Egg case and container markings.

All egg cases or retail containers in which eggs are kept for the purpose of sale, or offered or exposed for sale (except those exempt in ~~§ 3.1-765~~ § 3.2-5305), shall be marked according to one of the grades and sizes, or marked ungraded. The marking, identity of the commodity in the package, and net quantity of the contents in terms of count shall appear on the principal display panel of the package. The retail containers shall bear the name and address of the packer or distributor when the eggs are kept, offered, exposed for sale or sold at any place other than on the premises where packed. The grade and size, or ungraded status, shall be spelled out in full. All information required to appear on the container shall be prominent, definite, and plain, and shall be conspicuous as to size and style of letters and numbers. When loose eggs are on display for sale, a sign shall be attached showing the grade and size, or the ungraded status, in plain view to the public.

The plant of origin grading within the meaning of "Regulations Governing the Grading of Shell Eggs and United States Standards, Grades and Weight Classes for Shell Eggs (7 CFR Part 56)," § 56.1 of the Code of Federal Regulations shall be identified on all cases or containers in which shell eggs are delivered to the retail or food service institution.

VA.R. Doc. No. R09-1717; Filed January 13, 2009, 11:27 a.m.

Final Regulation

Title of Regulation: 2VAC5-620. Regulations Pertaining to the Establishment of the Dangerous Dog Registry (amending 2VAC5-620-20, 2VAC5-620-100).

Statutory Authority: § 3.2-6542 of the Code of Virginia.

Effective Date: March 4, 2009.

Agency Contact: Colleen Calderwood, DVM, Program Manager, Office of Veterinary Services, Department of Agriculture and Consumer Services, 102 Governor Street, Suite 141, Richmond, VA 23219, telephone (804) 786-2483, FAX (804) 371-2380, or email colleen.calderwood@vdacs.virginia.gov.

Summary:

The amendments update citations to reflect the recodification of Title 3.1 to Title 3.2 of the Code of Virginia, which became effective October 1, 2008.

agents shall verify the removal of certification tags from all bags on lots released for nonpropagational purposes.

VA.R. Doc. No. R09-1701; Filed January 13, 2009, 11:22 a.m.

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Notice of Extension of Emergency Regulation

Title of Regulation: **3VAC5-50. Retail Operations (amending 3VAC5-50-140).**

Statutory Authority: §§ 4.1-103 and 41.1-111 of the Code of Virginia.

Effective Dates: January 9, 2008, through June 30, 2009.

The Alcoholic Beverage Control Board requested an extension of the above-referenced emergency regulation pursuant to § 2.2-4011 of the Code of Virginia. The emergency regulation was published in 24:11 VA.R. 1344-1345 February 4, 2008 (<http://register.dls.virginia.gov/vol24/iss11/v24i11.pdf>).

The final permanent regulation to replace this emergency regulation was adopted by the Alcoholic Beverage Control Board on November 17, 2008. Executive review of the regulation was completed in January. The regulation is expected to be published in the Virginia Register of Regulations in February 2009, and to become effective in March. A gap between the emergency regulation and its permanent replacement would make the board's nudity regulation unenforceable for that period since the U. S. District Court for the Eastern District of Virginia has determined that without an exemption for legitimate artistic, scientific, or political expression, the current permanent regulation is unconstitutionally broad.

This regulation has been the focus of litigation since 2007. Its enforcement was enjoined in August 2007, which led to the adoption of the emergency regulation. The regulatory action that creates the permanent replacement was actually initiated prior to the effective date of the emergency regulation, and the board has acted expeditiously at each step of the process. Executive branch approval was slowed because of interest in seeking changes to the procedure for approving the employment of felons at licensed establishments, another change made in the regulatory action. The proposed regulation was submitted by the department on October 5, 2007. It was approved for publication July 3, 2008, submitted to the Registrar of Regulations on July 14, 2008, and published in the Virginia Register of Regulations on August 18, 2008. The public comment period on the proposed regulation ended October 17, 2008, and the board took final action on November 17, 2008, and submitted the final

regulation to the Department of Planning and Budget on November 19, 2008.

A six-month extension of the expiration date is requested to make sure that there is no gap between the emergency regulation and the permanent replacement, taking into account the Virginia Register publication schedule and any possible additional public comment period.

The Governor approved the department's request to extend the expiration date of the emergency regulations for six months as provided in § 2.2-4011 D of the Code of Virginia. Therefore, the regulation will continue in effect through June 30, 2009.

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.

VA.R. Doc. No. R08-924; Filed January 9, 2009, 5:03 p.m.

Final Regulation

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

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

Effective Date: March 4, 2009.

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

Summary:

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

The amendment to the proposed regulation clarifies that the prohibition from entering a mixed beverage restaurant wearing bathing suits or revealing clothing

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applies to persons connected with the licensed business, not to patrons.

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.

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

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

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

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

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

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

D. Notwithstanding the provisions of § 4.1-225 (1) (i) of the Code of Virginia, the board will not take action to suspend or revoke a license if a licensee knowingly employs a person who has been convicted in any court of a felony or of any crime or offense involving moral turpitude, except in the following two categories:

1. The board may suspend or revoke a license if a licensee knowingly employs in the business conducted under such license, as agent, servant, or employee, in a position that is involved in the selling or serving of alcoholic beverages to customers, any person who has been convicted of a felony violation of Articles 1 (§ 18.2-248 et seq.), 1.1 (§ 18.2-265.1 et seq.), or 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2 or a similar offense under the laws of any state, or the United States; or

2. The board may suspend or revoke a license if a licensee knowingly employs in the business conducted under such license, as agent, servant, or employee, in a position that is involved in the creation or maintenance of records required to be kept by the licensee under the provisions of Title 4.1 of the Code of Virginia or board regulations, or in the preparation or filing of any tax return or report required under Title 4.1 or Title 58.1 of the Code of Virginia or board regulations, any person who has been convicted of a felony violation of Articles 2 (§ 18.2-89 et seq.), 3 (§ 18.2-97.1 et seq.), 4 (§ 18.2-112.1 et seq.), or 7.1 (§ 18.2-152.2 et seq.) of Chapter 5 of Title 18.2 or Articles 1 (§ 18.2-172.2 et seq.), 3 (§ 18.2-178 et seq.), 4 (§ 18.2-182 et seq.), 5 (§ 18.2-186 et seq.), 6 (§ 18.2-194 et seq.), or 9 (§ 18.2-246.1 et seq.) of Chapter 6 of Title 18.2 or a similar offense under the laws of any state, or the United States.

E. If a licensee wishes to employ a person whose employment would be covered by subdivisions D 1 or 2 of this section, or who has violated the laws of the Commonwealth, of any other state, or of the United States, applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages, the licensee may apply to the board for approval of such employment. The board will cause the Bureau of Law Enforcement Operations to conduct an investigation into the suitability of the person for employment and recommend approval or disapproval. Before disapproving the employment of a person, the board shall accord him the same notice, opportunity to be heard, and follow the same administrative procedures accorded a licensee cited for a violation of Title 4.1 of the Code of Virginia.

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

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

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

No retail licensee shall entreat, urge or entice any patron of his establishment to purchase any alcoholic beverage; nor shall such licensee allow any other person to so entreat, urge or entice a patron upon his licensed premises. Entreating, urging or enticing shall include, but not be limited to, placing

alcoholic beverages in containers of ice which are visible, located in public display areas and available to patrons of retail establishments for off-premises sales, except for farm winery licensees operating at a remote location in connection with a wine festival. Knowledge by a manager of the licensee of a violation of this section shall be imputed to the licensee.

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

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

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

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

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

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

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

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

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

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

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

In regard to both grocery stores and convenience grocery stores, "edible items" shall mean such items normally used in the preparation of meals, including liquids, ~~and which shall include a variety (at least five) of representative items from each of the basic food groups: dairy, meat, grain, vegetables and fruit.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The extent to which sales of required commodities are secondary or merely incidental to sales of all products sold in such establishment;

2. The extent to which a variety of edible items of the types normally found in grocery stores are sold; and

3. The extent to which such establishment is constructed, arranged or illuminated to allow reasonable observation of the age and sobriety of purchasers of alcoholic beverages.

E. Notwithstanding the above, the board may issue a temporary license for any of the above retail operations. Such licenses may be issued only after application has been filed in accordance with § 4.1-230 of the Code of Virginia and in cases where the sole objection to issuance of a license is that the establishment will not be qualified in terms of the sale of food or edible items. If a temporary license is issued, the

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board shall conduct an audit of the business after a reasonable period of operation not to exceed 180 days. Should the business be qualified, the license applied for may be issued. If the business is not qualified, the application will become the subject of a hearing if the applicant so desires. No further temporary license shall be issued to the applicant or to any other person with respect to that establishment for a period of one year from the expiration and, once the application becomes the subject of a hearing, no temporary license may be issued.

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

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

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

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

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

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

1. A licensed club may ~~allow nonmembers, who would otherwise qualify for a banquet or banquet special events license, to use club premises, where the privileges of the club license are exercised, 12 times per calendar year for~~ (i) hold public events held at the licensed premises, such events allowing nonmembers to attend and participate in the event at the licensed premises; or (ii) allow its premises to be used by organizations or groups who obtain banquet

~~or banquet special events licenses. The total number of such events in both categories may not exceed 24 per calendar year.~~

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

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

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

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

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

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

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

~~G. F.~~ Each club licensee shall prepare and sign an annual financial statement on forms prescribed by the board. The statement may be on a calendar year or fiscal year basis, but shall be consistent with any established tax year of the club. The statement must be prepared and available for inspection on the club premises no later than 120 days next following the last day of the respective calendar or fiscal year, and each such statement must be maintained on the premises for a

period of three consecutive years. In addition, each club holding a mixed beverage license shall be required to prepare and timely submit the mixed beverage annual review report required by 3VAC5-70-90 D.

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

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

1. The real or simulated display of any portion of the genitals, pubic hair or buttocks, or any portion of the breast below the top of the areola, by any employee, or by any other person; except that when entertainers are on a platform or stage and reasonably separated from the patrons of the establishment, they shall be in conformity with subdivision 2;
2. The real or simulated display of any portion of the genitals, pubic hair or anus by an entertainer, or any portion of the areola of the breast of a female entertainer. When not on a platform or stage and reasonably separate from the patrons of the establishment, entertainers shall be in conformity with subdivision 1;
3. Any real or simulated act of sexual intercourse, sodomy, masturbation, flagellation or any other sexual act prohibited by law, by any person, whether an entertainer or not; or
4. The fondling or caressing by any person, whether an entertainer or not, of his own or of another's breast, genitals or buttocks.

As used in this section, the term "reasonably separated" shall mean that no portion of the body of an entertainer may come in contact with any portion of the body of a patron.

B. No mixed beverage licensee shall permit any person [connected with the licensed business in any capacity] to enter or remain on the premises with less than a fully-opaque covering of the genitals, pubic hair or buttocks, or any portion of the breast below the top of the areola. [For the purposes of this subsection, "connected with the licensed business" shall mean: (i) any owner, partner, member, manager, agent, or employee of the licensed business; (ii) any entertainer or other contractor with the licensed business; or (iii) any participant in any contest, display, or other event conducted by or at the invitation of the licensed business.]

C. The provisions of this section shall not apply to persons operating theaters, concert halls, art centers, museums, or similar establishments that are primarily devoted to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific or political value.

VA.R. Doc. No. R07-625; Filed January 13, 2009, 10:05 a.m.

Emergency Regulation

Title of Regulation: **3VAC5-50. Retail Operations (adding 3VAC5-50-230).**

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

Effective Date: January 13, 2009, through January 12, 2010.

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

Preamble:

Chapter 172 of the 2008 Acts of Assembly amended the provisions of subdivision A 12 of § 4.1-210 of the Code of Virginia, adding "dessert wines as defined by Board regulation" to the types of alcoholic beverages that may be sold and sold and served by holders of limited mixed beverage restaurant licenses. The second enactment clause of this act provides that "the Alcoholic Beverage Control Board shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment." The purpose of this action is to create a new section, defining "dessert wines" for the purposes of the act.

The new section to be promulgated provides a definition of "dessert wines," which holders of limited mixed beverage restaurant licenses will be authorized to sell and serve. The board is required to define the term by statute. The goal of the new section is to provide a broad definition, to enable licensees to sell and serve most wine products consumers desire to drink with dessert, while at the same time allowing easy compliance with and enforcement of the regulation.

Limited mixed beverage restaurants are not subject to the full food sale requirements of other mixed beverage restaurants. The General Assembly has determined that such restaurants should sell a limited number of liqueurs mixed with coffee or other drinks, as well as dessert wines. The proposed regulatory action is necessary to protect the health, safety, or welfare of citizens by insuring that the alcoholic beverage products offered for sale fall within the limits prescribed by the legislature. During the development of the permanent regulation, there could be additional types of wines identified as properly considered "dessert wines," although none have been discovered in research.

3VAC5-50-230. Dessert wines.

For the purposes of § 4.1-210 A 12 of the Code of Virginia, "dessert wines" shall mean any wine having an alcohol content of more than 14% by volume, any wine whose label contains a statement that it contains more than 2.0% residual

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sugar, or any wine described on its label as a "dessert," "late harvest," or "ice" wine.

VA.R. Doc. No. R09-1605; Filed January 13, 2009, 10:05 a.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Fast-Track Regulation

Titles of Regulations: **8VAC20-10. Board of Education Public Participation Guidelines (repealing 8VAC20-10-10).**

8VAC20-11. Regulations Governing Public Participation (adding 8VAC20-11-10 through 8VAC20-11-110).

Statutory Authority: §§ 2.2-4007.02 and 22.1-16 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 March 4, 2009.

Effective Date: March 19, 2009.

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

Basis: Under § 2.2-4007.02 of the Code of Virginia, every rulemaking body in Virginia is required to adopt public participation guidelines and to use these guidelines in the development of its regulations. This law was modified during the 2008 General Assembly session, and the 2008 modifications permit the use of fast-track rulemaking procedures to promulgate the public participation regulations. By action of the General Assembly, the adoption of public participation rules is mandatory, and the use of the fast-track process is discretionary.

Purpose: The purpose of the Regulations Governing Public Participation is to promote public involvement in the development, amendment, or repeal of Board of Education regulations.

The Board of Education's rationale for the regulation is to comply with state law, as described above. The Board of Education proposes minor, noncontroversial modifications to the model public participation guidelines developed by the Department of Planning and Budget (DPB); therefore the fast-track process is being utilized.

The reason that the proposed regulation is essential to protect the welfare of citizens is the Board of Education's position

that those who are affected by a decision have a right to be informed and involved in the decision making process. Hence, the regulations set forth a uniform procedure for the public's contribution to the board in its rulemaking process.

The goals of the proposed regulation are:

1. To set forth a procedure to seek out and facilitate the involvement of those potentially affected by or interested in a regulatory action;
2. To communicate clearly to the Board of Education's constituents how they may participate in the regulatory process in a meaningful way; and

To ensure that the Board of Education's regulatory procedures are in full compliance with state laws and regulations governing such actions.

Rationale for Using Fast-Track Process: The changes proposed by the Board of Education are noncontroversial in that, in every case, the proposed changes are consistent with longstanding Board of Education practice and procedures; the terms are consistent with current, clearly understood use; and the proposed language serves to clarify a provision. In no instance is the intent or meaning changed from the model public participation guidelines as promulgated by DPB.

Substance: The proposed regulations are consistent with the model public participation guidelines developed by DPB. The Board of Education has made minor adjustments in the model guidelines, including language to clarify the advisory capacity standing advisory committees. Certain terms are clarified to be consistent with terminology in current use in the field.

The current regulation (8VAC20-10-10) is being repealed because it has not been amended since 1984. It is now seriously outdated because it pre-dates most of the current provisions of the Administrative Process Act. It also pre-dates the use of the Internet and electronic communications and, thus, contains no provision for electronic transmission of notices and comments.

Issues: The advantage to the Commonwealth, the Board of Education, and the public is that the proposed regulations are intended to inform the public in a way that encourages public participation and to make such participation meaningful, convenient, cost effective, and accessible to constituents. There are no known disadvantages to the Commonwealth, the public, or the Board of Education.

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

Summary of the Proposed Amendments to Regulation. The Board of Education (Board) proposes to adopt the model public participation guidelines (PPGs) 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 the following amendments:

1. Title: The Board proposes to change the title from "Public Participation Guidelines" to "Regulations Governing Public Participation."

2. Definition of "Agency": The Board proposes to amend the wording in the definition of the term "agency" for clarification purposes.

3. Notification List: The Board proposes to delete the provision stating that the "agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, and sections."

4. Undeliverable Electronic Mail: The Board wishes to change the model provision of the notification list section that states "When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart" to "When electronic mail is returned as undeliverable on two occasions at least 24 hours apart."

5. Public Comment: Lastly, with regard to the public comment section of the regulation, the model PPGs state as follows: "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." The Board proposes to amend this language to read "either orally at a public hearing or at a Board of Education meeting or in writing at any time during the public comment period."

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 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.¹ 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.

As described above, promulgating model PPGs will be beneficial in that the Department of Education (DOE) 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. The Board does propose several amendments that make the DOE PPGs less consistent with other agency PPGs. The proposed changes to the title of the regulations, wording in the definition "agency," and undeliverable electronic mail have no effect on requirements or opportunities for anyone or any entity private or public. According to DOE, there will always be one master notification list and there is no intention of ever maintaining additional lists for persons who have requested to be informed of specific regulatory issues, proposals, and sections. Thus, the proposal to delete language affording the agency the opportunity of maintaining such lists should have no impact.

Changing "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" to read "either orally at a public hearing or at a Board of Education meeting or in writing at any time during the public comment period" potentially produces both benefits and costs. DOE has stated that the additional language is intended to make clear to the public that the Board cannot practically consider comments from the public at informal settings such as when an individual spots a Board member at the supermarket. Making clear to the public that they need to make more official comments for their views and information to be properly considered is beneficial in informing the public. On the other hand, there may be some individuals who are unable to appear in person or present their views in writing. The additional language may preclude or at least add to the difficulty for such individuals to present their views.

Businesses and Entities Affected. The proposed amendments affect the 132 school divisions in the Commonwealth, as well their students and staff, and all members of the public interested in participating in the development of Virginia's education policies and regulations.

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.

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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.

¹ 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 agrees with the economic impact analysis done by DPB. The agency will continue to examine the economic and administrative impact of the regulations as they progress through the Administrative Process Act process.

Summary:

The 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 (DPB). 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.

The present action proposes minor, noncontroversial revisions to model public participation guidelines as developed by DPB. The changes proposed by the Board of Education are noncontroversial in that, in every case, the proposed changes are consistent with longstanding Board of Education practice and procedures; the terms are consistent with current, clearly understood use; and the proposed language serves to clarify a provision. In no instance is the intent or meaning of a provision changed or modified from the model public participation guidelines as promulgated by DPB.

CHAPTER 11
REGULATIONS GOVERNING PUBLIC PARTICIPATION

Part I
Purpose and Definitions

8VAC20-11-10. Purpose.

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

8VAC20-11-20. 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 Education, 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 Board of Education.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by § 2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§ 2.2-4031 et seq.) of the Administrative Process Act.

Part II Notification of Interested Persons

8VAC20-11-30. 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. When electronic mail is returned as undeliverable on two 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.

D. When mail delivered by a postal carrier is returned as undeliverable on two occasions, that person may be deleted from the list.

E. 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.

8VAC20-11-40. 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 8VAC20-11-30, 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

8VAC20-11-50. 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 at a public hearing or at a Board of Education meeting or in writing at any time during the public comment period, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

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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.

8VAC20-11-60. 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.

8VAC20-11-70. 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.

D. At the discretion of the Board of Education, the appropriate standing advisory committee to the Board of Education may serve in the same advisory capacity as a regulatory advisory panel.

8VAC20-11-80. 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.

C. At the discretion of the Board of Education, the appropriate standing advisory committee to the Board of Education may serve in the same advisory capacity as a negotiated rulemaking panel.

8VAC20-11-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, or Board of Education advisory committees 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.

8VAC20-11-100. 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.

8VAC20-11-110. 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. R09-1439; Filed January 13, 2009, 1:16 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

Title of Regulation: 12VAC5-90. Regulations for Disease Reporting and Control (amending 12VAC5-90-80).

Statutory Authority: § 32.1-35 of the Code of Virginia.

Effective Date: March 4, 1990.

Agency Contact: Diane Woolard, PhD, Director, Disease Surveillance, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-8124, or email diane.woolard@vdh.virginia.gov.

Summary:

This amendment makes permanent an emergency regulation that went into effect on October 24, 2007. It requires laboratory directors to report ethicillin-resistant Staphylococcus aureus (MRSA) infections confirmed from specimens collected from normally sterile sites of the body, which indicate a serious, invasive form of the infection.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Part III
Reporting of Disease

12VAC5-90-80. Reportable disease list.

A. The board declares suspected or confirmed cases of the following named diseases, toxic effects, and conditions to be reportable by the persons enumerated in 12VAC5-90-90. Conditions identified by an asterisk (*) require rapid communication to the local health department within 24 hours of suspicion or confirmation, as defined in subsection C of this section. Other conditions should be reported within three days of suspected or confirmed diagnosis.

Acquired immunodeficiency syndrome (AIDS)

Amebiasis

*Anthrax

Arboviral infections (e.g., EEE, LAC, SLE, WNV)

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- *Botulism
- *Brucellosis
- Campylobacteriosis
- Chancroid
- Chickenpox (Varicella)
- Chlamydia trachomatis infection
- *Cholera
- Creutzfeldt-Jakob disease if <55 years of age
- Cryptosporidiosis
- Cyclosporiasis
- *Diphtheria
- *Disease caused by an agent that may have been used as a weapon
- Ehrlichiosis
- Escherichia coli infection, Shiga toxin-producing
- Giardiasis
- Gonorrhea
- Granuloma inguinale
- *Haemophilus influenzae infection, invasive
- Hantavirus pulmonary syndrome
- Hemolytic uremic syndrome (HUS)
- *Hepatitis A
- Hepatitis B: (acute and chronic)
- Hepatitis C (acute and chronic)
- Hepatitis, other acute viral
- Human immunodeficiency virus (HIV) infection
- Influenza
- *Influenza-associated deaths in children <18 years of age
- Kawasaki syndrome
- Lead-elevated blood levels
- Legionellosis
- Leprosy (Hansen's disease)
- Listeriosis
- Lyme disease
- Lymphogranuloma venereum
- Malaria
- *Measles (Rubeola)
- *Meningococcal disease
- *Monkeypox
- Mumps
- Ophthalmia neonatorum
- *Outbreaks, all (including but not limited to foodborne, nosocomial, occupational, toxic substance-related, and waterborne)
- *Pertussis
- *Plague
- *Poliomyelitis
- *Psittacosis
- *Q fever
- *Rabies, human and animal
- Rabies treatment, post-exposure
- Rocky Mountain spotted fever
- *Rubella, including congenital rubella syndrome
- Salmonellosis
- *Severe acute respiratory syndrome (SARS)
- Shigellosis

- *Smallpox (Variola)
- Streptococcal disease, Group A, invasive
- Streptococcus pneumoniae infection, invasive, in children <5 years of age
- Syphilis (report *primary and *secondary syphilis by rapid means)
- Tetanus
- Toxic shock syndrome
- Toxic substance-related illness
- Trichinosis (Trichinellosis)
- *Tuberculosis, active disease
- Tuberculosis infection in children <4 years of age
- *Tularemia
- *Typhoid fever
- *Unusual occurrence of disease of public health concern
- *Vaccinia, disease or adverse event
- Vancomycin-intermediate or vancomycin-resistant Staphylococcus aureus infection
- *Vibrio infection
- *Viral hemorrhagic fever
- *Yellow fever
- Yersiniosis

B. Conditions reportable by directors of laboratories.

Conditions identified by an asterisk (*) require rapid communication to the local health department within 24 hours of suspicion or confirmation, as defined in subsection C of this section. Other conditions should be reported within three days of suspected or confirmed diagnosis.

Amebiasis—by microscopic examination, culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

*Anthrax—by culture, antigen detection or nucleic acid detection

Arboviral infection—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

*Botulism—by culture or identification of toxin in a clinical specimen

*Brucellosis—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

Campylobacteriosis—by culture

Chancroid—by culture, antigen detection, or nucleic acid detection

Chickenpox (varicella)—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

Chlamydia trachomatis infection—by culture, antigen detection, nucleic acid detection or, for lymphogranuloma venereum, serologic results consistent with recent infection

*Cholera—by culture or serologic results consistent with recent infection

Creutzfeldt-Jakob disease if <55 years of age—presumptive diagnosis—by histopathology in patients under the age of 55 years

Cryptosporidiosis—by microscopic examination, antigen detection, or nucleic acid detection

Cyclosporiasis—by microscopic examination or nucleic acid detection

*Diphtheria—by culture

Ehrlichiosis—by culture, nucleic acid detection, or serologic results consistent with recent infection

Escherichia coli infection, Shiga toxin-producing—by culture of E. coli O157 or other Shiga toxin-producing E. coli, Shiga toxin detection (e.g., by EIA), or nucleic acid detection

Giardiasis—by microscopic examination or antigen detection

Gonorrhea—by microscopic examination of a urethral smear specimen (males only), culture, antigen detection, or nucleic acid detection

*Haemophilus influenzae infection, invasive—by culture, antigen detection, or nucleic acid detection from a normally sterile site

Hantavirus pulmonary syndrome—by antigen detection (immunohistochemistry), nucleic acid detection, or serologic results consistent with recent infection

*Hepatitis A—by detection of IgM antibodies

Hepatitis B (acute and chronic)—by detection of HBsAg or IgM antibodies

Hepatitis C (acute and chronic)—by hepatitis C virus antibody (anti-HCV) screening test positive with a signal-to-cutoff ratio predictive of a true positive as determined for the particular assay as defined by CDC, HCV antibody positive by immunoblot (RIBA), or HCV RNA positive by nucleic acid test. For all hepatitis C patients, also report available results of serum alanine aminotransferase (ALT), anti-HAV IgM, anti-HBc IgM, and HBsAg

Human immunodeficiency virus infection—by culture, antigen detection, nucleic acid detection, or detection of antibody confirmed with a supplemental test. For HIV-infected patients, report all results of CD4 and HIV viral load tests

Influenza—by culture, antigen detection by direct fluorescent antibody (DFA) or nucleic acid detection

Lead-elevated blood levels—by blood lead level greater than or equal to 10 µg/dL in children ages 0-15 years, or

greater than or equal to 25 µg/dL in persons older than 15 years of age

Legionellosis—by culture, antigen detection including urinary antigen), nucleic acid detection, or serologic results consistent with recent infection

Listeriosis—by culture

Malaria—by microscopic examination, antigen detection, or nucleic acid detection

*Measles (rubeola)—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

*Meningococcal disease—by culture or antigen detection from a normally sterile site

*Monkeypox—by culture nucleic acid detection

Mumps—by culture, nucleic acid detection, or serologic results consistent with recent infection

*Mycobacterial diseases—(See 12VAC5-90-225 B) Report any of the following:

1. Acid fast bacilli by microscopic examination;
2. Mycobacterial identification—preliminary and final identification by culture or nucleic acid detection;
3. Drug susceptibility test results for M. tuberculosis.

*Pertussis—by culture, antigen detection, or nucleic acid detection

*Plague—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

*Poliomyelitis—by culture

*Psittacosis—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

*Q fever—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

*Rabies, human and animal—by culture, antigen detection by direct fluorescent antibody test, nucleic acid detection, or, for humans only, serologic results consistent with recent infection

Rocky Mountain spotted fever—by culture, antigen detection (including immunohistochemical staining), nucleic acid detection, or serologic results consistent with recent infection

*Rubella—by culture, nucleic acid detection, or serologic results consistent with recent infection

Salmonellosis—by culture

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*Severe acute respiratory syndrome—by culture, nucleic acid detection, or serologic results consistent with recent infection

Shigellosis—by culture

*Smallpox (variola)—by culture or nucleic acid detection

Staphylococcus aureus infection, resistant, as defined below:

1. Methicillin-resistant - by antimicrobial susceptibility testing of a Staphylococcus aureus isolate, with a susceptibility result indicating methicillin resistance, cultured from a normally sterile site;

2. Vancomycin-intermediate or vancomycin-resistant Staphylococcus aureus infection - by antimicrobial susceptibility testing of a Staphylococcus aureus isolate, with a vancomycin susceptibility result of intermediate or resistant, cultured from a clinical specimen.

Streptococcal disease, Group A, invasive—by culture from a normally sterile site

Streptococcus pneumoniae infection, invasive, in children <5 years of age—by culture from a normally sterile site in a child under the age of five years

*Syphilis—by microscopic examination (including dark field), antigen detection (including direct fluorescent antibody), or serology by either treponemal or nontreponemal methods

Toxic substance-related illness—by blood or urine laboratory findings above the normal range, including but not limited to heavy metals, pesticides, and industrial-type solvents and gases

Trichinosis (trichinellosis)—by microscopic examination of a muscle biopsy or serologic results consistent with recent infection

*Tularemia—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

*Typhoid fever—by culture

*Vaccinia, disease or adverse event—by culture or nucleic acid detection

~~Vancomycin intermediate or vancomycin resistant Staphylococcus aureus infection by antimicrobial susceptibility testing of a Staphylococcus aureus isolate, with a vancomycin susceptibility result of intermediate or resistant, cultured from a clinical specimen~~

*Vibrio infection—by culture

*Viral hemorrhagic fever—by culture, antigen detection (including immunohistochemical staining), nucleic acid

detection, or serologic results consistent with recent infection

*Yellow fever—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

Yersiniosis—by culture, nucleic acid detection, or serologic results consistent with recent infection

C. Reportable diseases requiring rapid communication. Certain of the diseases in the list of reportable diseases, because of their extremely contagious nature or their potential for greater harm, or both, require immediate identification and control. Reporting of persons confirmed or suspected of having these diseases, listed below, shall be made within 24 hours by the most rapid means available, preferably that of telecommunication (e.g., telephone, telephone transmitted facsimile, pagers, etc.) to the local health director or other professional employee of the department. (These same diseases are also identified by an asterisk (*) in subsection A and subsection B, where applicable, of this section.)

Anthrax
Botulism
Brucellosis
Cholera
Diphtheria
Disease caused by an agent that may have been used as a weapon
Haemophilus influenzae infection, invasive
Hepatitis A
Influenza deaths in children <18 years of age
Measles (Rubeola)
Meningococcal disease
Monkeypox
Outbreaks, all
Pertussis
Plague
Poliomyelitis
Psittacosis
Q fever
Rabies, human and animal
Rubella
Severe acute respiratory syndrome (SARS)
Smallpox (Variola)
Syphilis, primary and secondary
Tuberculosis, active disease
Tularemia
Typhoid fever
Unusual occurrence of disease of public health concern
Vaccinia, disease or adverse event
Vibrio infection
Viral hemorrhagic fever
Yellow Fever

D. Toxic substance-related illnesses. All toxic substance-related illnesses, including pesticide and heavy metal

poisoning or illness resulting from exposure to an occupational dust or fiber or radioactive substance, shall be reported.

If such illness is verified or suspected and presents an emergency or a serious threat to public health or safety, the report of such illness shall be by rapid communication as in subsection C of this section.

E. Outbreaks. The occurrence of outbreaks or clusters of any illness which may represent a group expression of an illness which may be of public health concern shall be reported to the local health department by the most rapid means available.

F. Unusual or ill-defined diseases or emerging or reemerging pathogens. Unusual or emerging conditions of public health concern shall be reported to the local health department by the most rapid means available. In addition, the commissioner or his designee may establish surveillance systems for diseases or conditions that are not on the list of reportable diseases. Such surveillance may be established to identify cases (delineate the magnitude of the situation), to identify the mode of transmission and risk factors for the disease, and to identify and implement appropriate action to protect public health. Any person reporting information at the request of the department for special surveillance or other epidemiological studies shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

VA.R. Doc. No. R08-1024; Filed January 13, 2009, 11:51 a.m.

Final Regulation

Title of Regulation: 12VAC5-490. Virginia Radiation Protection Regulations: Fee Schedule (adding 12VAC5-490-30, 12VAC5-490-40).

Statutory Authority: § 32.1-229.1 of the Code of Virginia.

Effective Date: March 4, 2009.

Agency Contact: Les Foldesi, Director, Bureau of Radiological Health, Department of Health, 109 Governor Street, Room 730, Richmond, VA 23219, telephone (804) 864-8151, FAX (804) 864-8155, or email les.foldesi@vdh.virginia.gov.

Summary:

This regulation establishes a fee structure to support the radioactive materials licensing and inspection program for those materials the U.S. Nuclear Regulatory Commission intends to transfer to the Commonwealth by agreement.

Changes to the proposed regulation reduce the fee for (i) Category 7A to \$7,500, (ii) Category 7D to \$3,750, and (iii) Category 11B to zero.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's

response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

12VAC5-490-30. Application and licensing fees for naturally occurring and accelerator-produced radioactive materials.

The application and licensing fees to receive, possess, use, transfer, own or acquire naturally occurring and accelerator-produced radioactive materials license pursuant to 12VAC5-481 are listed in 12VAC5-490-40.

12VAC5-490-40. Application and licensing fees for byproduct, source, and special nuclear materials.

The application and licensing fees to receive, possess, use, transfer, own or acquire byproduct materials, source and special nuclear materials shall not become effective until 30 days after publication in the Virginia Register of a notice of an agreement executed by the Commonwealth of Virginia and the federal government under the provisions of § 274b of the Atomic Energy Act of 1954, as amended (73 Statute 689). Application for a radioactive materials license and annual fees for persons issued a radioactive materials license pursuant to 12VAC5-481 are listed in the following table:

Category	Specific License Type	Application & Annual Fee
<u>1</u>	<u>Special Nuclear Material (SNM)</u>	
	<u>A. License for possession and use of SNM in sealed sources contained in devices used in measuring systems</u>	<u>\$1,000</u>
	<u>B. License for use of SNM to be used as calibration and reference sources</u>	<u>\$500</u>
	<u>C. SNM - all other, except license authorizing special nuclear material in unsealed form that would constitute a critical mass (fee waived if facility holds additional license category)</u>	<u>\$2,000</u>
<u>2</u>	<u>Source Material</u>	
	<u>A. Source material processing and distribution</u>	<u>\$3,000</u>
	<u>B. Source material in shielding (fee waived if facility holds additional license category)</u>	<u>\$200</u>
	<u>C. Source material - all other, excluding depleted uranium</u>	<u>\$2,000</u>

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		<u>used as shielding or counterweights</u>			<u>underwater irradiators for irradiation of materials in which the source is not exposed for irradiation</u>		
3		<u>Byproduct, NARM</u>					
	A.	<u>License of broad scope for processing or manufacturing of items for commercial distribution</u>	<u>\$15,000</u>		I.	<u>License for possession and use of at least 370 TBq (10,000 curies) and less than 3.7 PBq (100,000 curies) of radioactive material in sealed sources for irradiation of materials)</u>	<u>\$5,000</u>
	B.	<u>License for processing or manufacturing and commercial distribution of radiopharmaceuticals, generators, reagent kits and sources or devices</u>	<u>\$8,000</u>		J.	<u>License for possession and use of 3.7 PBq (100,000 curies) or more of radioactive material in sealed sources for irradiation of materials</u>	<u>\$15,000</u>
	C.	<u>License for commercial distribution or redistribution of radiopharmaceuticals, generators, reagent kits and sources or devices</u>	<u>\$4,000</u>		K.	<u>License to distribute items containing radioactive materials to persons under a general license</u>	<u>\$2,000</u>
	D.	<u>Other licenses for processing or manufacturing of items for commercial distribution</u>	<u>\$4,000</u>		L.	<u>License to possess radioactive materials intended for distribution to persons exempt from licensing</u>	<u>\$1,000</u>
	E.	<u>License for industrial radiography operations performed only in a shielded radiography installation</u>	<u>\$3,000</u>		M.	<u>License of broad scope for research and development that does not authorize commercial distribution</u>	<u>\$7,500</u>
	F.	<u>License for industrial radiography performed only at the address indicated on the license, and at temporary job sites</u>	<u>\$4,000</u>		N.	<u>Other licenses for research and development that do not authorize commercial distribution</u>	<u>\$1,500</u>
	G.	<u>License for possession and use of less than 370 TBq (10,000 curies) of radioactive material in sealed sources for irradiation of materials where the source is not removed from the shield (fee waived if facility holds additional irradiator license category)</u>	<u>\$3,000</u>		O.	<u>License for installation, repair, maintenance or other service of devices or items containing radioactive material, excluding waste transportation or broker services</u>	<u>\$1,500</u>
	H.	<u>License for possession and use of less than 370 TBq (10,000 curies) of radioactive material in sealed sources for irradiation of materials where the source is exposed for irradiation purposes. The category also includes</u>	<u>\$3,000</u>		P.	<u>License for portable gauges</u>	<u>\$1,000</u>
					Q.	<u>License for portable X-ray fluorescence analyzer, dewpointer or gas chromatograph</u>	<u>\$250</u>
					R.	<u>Leak testing services</u>	<u>\$500</u>
					S.	<u>Instrument calibration</u>	<u>\$1,000</u>

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		<u>services</u>	
	<u>T.</u>	<u>Fixed gauges</u>	<u>\$1,000</u>
	<u>U.</u>	<u>All other byproduct, naturally occurring or accelerator-produced material licenses, except as otherwise noted</u>	<u>\$1,500</u>
<u>4</u>		<u>Waste Processing</u>	
	<u>A.</u>	<u>Commercial waste treatment facilities, including incineration</u>	<u>\$200,000</u>
	<u>B.</u>	<u>All other commercial facilities involving waste compaction, repackaging, storage or transfer</u>	<u>\$11,000</u>
	<u>C.</u>	<u>Waste processing - all other, including decontamination service</u>	<u>\$5,000</u>
<u>5</u>		<u>Well Logging</u>	
	<u>A.</u>	<u>License for well logging using sealed sources or subsurface tracer studies</u>	<u>\$3,000</u>
	<u>B.</u>	<u>License for well logging using sealed sources and subsurface tracer studies</u>	<u>\$4,000</u>
<u>6</u>		<u>Nuclear Laundry</u>	
	<u>A.</u>	<u>License for commercial collection and laundry of items contaminated with radioactive material</u>	<u>\$10,000</u>
<u>7</u>		<u>Medical/Veterinary</u>	
	<u>A.</u>	<u>License for human use of byproduct, source, special nuclear or NARM material in sealed sources contained in teletherapy or stereotactic radiosurgery devices, including mobile therapy</u>	[<u>\$10,000</u> <u>\$7,500</u>]
	<u>B.</u>	<u>License of broad scope for human use of byproduct, source, special nuclear or NARM materials used in medical diagnosis, treatment, research and development (excluding teletherapy or stereotactic radiosurgery devices)</u>	<u>\$15,000</u>

	<u>C.</u>	<u>License for mobile nuclear medicine</u>	<u>\$2,000</u>
	<u>D.</u>	<u>Medical - all others, including SNM pacemakers and high dose rate remote afterloading devices</u>	[<u>\$4,000</u> <u>\$3,750</u>]
	<u>E.</u>	<u>License for veterinary use of radioactive materials</u>	<u>\$2,000</u>
	<u>F.</u>	<u>In-vitro</u>	<u>\$1,000</u>
<u>8</u>		<u>Academic</u>	
	<u>A.</u>	<u>License for possession and use of byproduct, naturally occurring or accelerator-produced radioactive material for educational use or academic research and development that does not authorize commercial distribution, excluding broad scope or human use licenses</u>	<u>\$1,000</u>
<u>9</u>		<u>Accelerator</u>	
	<u>A.</u>	<u>License for accelerator production of radioisotopes with commercial distribution</u>	<u>\$4,000</u>
	<u>B.</u>	<u>Accelerator isotope production - all other (fee waived if facility holds medical broad scope license with no commercial distribution)</u>	<u>\$2,000</u>
<u>10</u>		<u>Reciprocity</u>	
	<u>A.</u>	<u>Reciprocity recognition of an out-of-state specific license</u>	<u>50% of annual fee of applicable category</u>
<u>11</u>		<u>Amendments</u>	
	<u>A.</u>	<u>Request to amend specific license - no license review</u>	<u>\$0</u>
	<u>B.</u>	<u>Request to amend specific license - license review required</u>	[<u>\$100</u> <u>\$0</u>]
	<u>C.</u>	<u>Request to terminate license</u>	<u>\$200</u>

VA.R. Doc. No. R07-114; Filed January 14, 2009, 2:37 p.m.

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Final Regulation

Title of Regulation: **12VAC5-490. Virginia Radiation Protection Regulations: Fee Schedule (amending 12VAC5-490-10, 12VAC5-490-20).**

Statutory Authority: § 32.1-229.1 of the Code of Virginia.

Effective Date: March 4, 2009.

Agency Contact: Les Foldesi, Director, Bureau of Radiological Health, Department of Health, 109 Governor Street, Room 730, Richmond, VA 23219, telephone (804) 864-8151, FAX (804) 864-8155, or email les.foldesi@vdh.virginia.gov.

Summary:

The amendments increase X-ray machine registration fees and inspection fees for most X-ray machines; decrease inspection fees for veterinary, podiatric, and cephalometric machines; and include additional types of X-ray machines in the inspection fee schedule.

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

12VAC5-490-10. Registration fees.

All operators or owners of diagnostic X-ray machines used in the healing arts and capable of producing radiation shall pay the following registration fee:

\$~~15~~ \$50 for each machine and additional tube(s) that have a required annual inspection, collected annually;

\$~~15~~ \$50 for each machine and additional tube(s) that have a required inspection every three years, collected every three years.

All operators or owners of therapeutic X-ray, particle accelerators, and teletherapy machines used in the healing arts capable of producing radiation shall pay the following annual registration fee:

\$~~15~~ \$50 for each machine with a maximum beam energy of less than ~~4Mev~~ 500 KVP;

\$~~15~~ \$50 for each machine with a maximum beam energy of ~~4Mev~~ 500 KVP or greater.

Where the operator or owner of the aforementioned machines is a state agency or local government, that agency is exempt from the payment of the registration fee.

12VAC5-490-20. Inspection fees.

The following fees shall be charged for surveys requested by the registrant and performed by a Department of Health inspector:

Type	Cost Per Tube
General Radiographic (includes: Chiropractic, Mammographic, Podiatric, Veterinary, Cephalometric, and Special Purpose X-ray Systems)	\$190 <u>\$230</u>
Fluoroscopic, C-arm Fluoroscopic	\$190 <u>\$230</u>
Combination (General Purpose-Fluoroscopic)	\$380 <u>\$460</u>
Dental Intraoral, Cephalometric and Panographic	\$65 <u>\$90</u>
<u>Veterinary</u>	<u>\$160</u>
<u>Podiatric</u>	<u>\$90</u>
<u>Cephalometric</u>	<u>\$120</u>
<u>Bone Densitometry</u>	<u>\$90</u>
<u>Combination (Dental Panographic and Cephalometric)</u>	<u>\$210</u>
<u>Shielding Review for Dental Facilities</u>	<u>\$250</u>
<u>Shielding Review for Radiographic, Chiropractic, Veterinary, Fluoroscopic, or Podiatric Facilities</u>	<u>\$450</u>

VA.R. Doc. No. R07-114a; Filed January 14, 2009, 2:36 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Fast-Track Regulation

Title of Regulation: **12VAC30-40. Eligibility Conditions and Requirements (amending 12VAC30-40-280, 12VAC30-40-345).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until March 4, 2009.

Effective Date: March 19, 2009.

Agency Contact: Lois Brengel, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-7958, FAX (804) 786-1680, or email lois.brengel@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the board's requirements.

The Medicaid authority as established by § 1902 (a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

Purpose: The purpose of this regulatory change is to amend current Medicaid regulations to provide for the disregard of income obtained through temporary employment with the United States Census Bureau for the decennial census. This proposed amendment to the current regulations contributes to preserving the health, safety, and welfare of the citizens of the Commonwealth by maintaining Medicaid coverage for recipients during this temporary period of employment and allowing for the disregard of this temporary source of income.

The loss of Medicaid coverage is potentially more costly to the Commonwealth than allowing the individual to maintain his current health status by continuing his Medicaid coverage during this period of temporary employment. Maintaining coverage should be cost effective. A loss of coverage could result in the utilization of emergent care because the individual would otherwise be uninsured. The use of emergent care by an uninsured individual places a burden on the healthcare system and serves to increase costs for the general population. The denial of Medicaid coverage for individuals, who would otherwise be eligible if not for this income, is also potentially more costly. Additionally, reapplication to the Medicaid Program at a point in time where lack of healthcare may have caused an individual's health status to deteriorate, would bring the individual back into the program with increased costs. Therefore, DMAS believes that it is in the best interests of the Commonwealth and its citizens to permit this regulatory change and allow for the disregard of this income source from the Medicaid income eligibility determination.

Rationale for Using Fast-Track Process: The fast-track process is being utilized to promulgate this change in regulatory language as it is expected to be a noncontroversial amendment to existing regulations. The result of this additional income disregard would allow vulnerable recipients to maintain their health care coverage and, therefore, a stable health status. The disregard would also allow individuals of limited financial means to temporarily increase their disposable income to provide for nonmedical needs. Additionally, the continuation of healthcare may result in an overall cost savings to the Commonwealth. The United States Census Bureau has advised that it will begin hiring temporary workers in preparation for the upcoming decennial census in 2009, meaning that the time frame to complete this change is very limited.

Substance: Current Medicaid regulations provide for the disregard of certain types of income. Under 12VAC30-40-345, Eligibility under § 1931 of the Act, Low-income Families and Children (LIFC) are covered by the Commonwealth. In determining eligibility for Medicaid, the agency uses the Aids to Families with Dependent Children

(AFDC) policy in effect as of July 16, 1996, with some modifications. With regard to income, this regulation allows for the use of less restrictive methodologies than those in effect as of July 16, 1996. Earned income is disregarded for any child under the age of 19 years old who is a student, as well as, the fair market value of all in-kind support and maintenance as income in determining financial eligibility for these groups. Under 12VAC30-40-280, More Liberal Income Disregards, the value of in-kind support and maintenance as income is disregarded when determining financial eligibility for Medicaid. This applies to Aged, Blind and Disabled (ABD) individuals, with the exception of the special income level group of institutionalized individuals, and all categorically needy and medically needy individuals under the family and children covered groups.

The recommended amendment of these regulations permits the addition of income derived from temporary census bureau employment to be disregarded or not counted as a source of income. The bureau concentrates employment efforts in the geographic locations where enumeration activities are being conducted. It places emphasis on hiring individuals from within low-income neighborhoods as they are hard to serve areas. This source of income is not only temporary, but offers no opportunity for permanent employment, is time limited and intermittent, with no benefits. An individual eligible for full coverage under the Medicaid Program must have an income of less than 80% of the federal poverty level or \$694 per month in the ABD covered groups. An adult eligible for full coverage in the LIFC covered groups must have countable income equal to or less than 90% Families and Children Income Limit for the locality in which the individual resides. [Example-A low income adult with a dependent child in a Group One locality must have countable income equal to or less than \$253.51 per month.] All of these individuals have incomes well below the federal poverty level. The amount of compensation for this type of work is not likely to cause these affected persons' incomes to exceed the federal poverty level. Therefore, the termination of Medicaid coverage for these individuals because of income earned from a temporary census job, under these circumstances would not be in the best interest of the individual or the Commonwealth.

Temporary positions with the Census Bureau are available only every 10 years. These positions last for short periods (2-3 months), work schedules are intermittent, no benefits are offered and no opportunity for permanent employment is available. Medicaid eligible individuals who may obtain these positions are low income adults with dependent children and Aged, Blind and Disabled (ABD) populations. The census bureau targets individuals for employment within the geographic locations in which it is conducting enumeration activities, especially in hard to serve low-income neighborhoods. This increases the likelihood that a Medicaid eligible individual may be employed by the Census Bureau. DMAS anticipates that this increase in income could cause

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ineligibility for Medicaid coverage for individuals, as they are within the income demographic targeted by the Census Bureau's hiring practices. These individuals are some of the most vulnerable of the general population and would otherwise be eligible for Medicaid if not for this temporary, intermittent source of income.

Individuals eligible under the Medicaid Program as noted are low-income individuals who may have had little or no access to health coverage up until the time they were determined eligible for Medicaid coverage. As such, some may come into the program with pre-existing illnesses, which could be chronic conditions. Loss or denial of Medicaid coverage because of this temporary income could cause these medical conditions to go untreated. The individual's primary source of treatment if Medicaid was unavailable would be emergent care. This is detrimental to both the individual in terms of health and to the overall healthcare system in terms of cost. Additionally, individuals placed in this position would more than likely gain Medicaid coverage for payment of these costs at a point in time when the cost may be greater to the program. This leads to the conclusion that there is potential for an overall increase in the cost to the Medicaid Program for these individuals over what would have been spent had Medicaid coverage been available.

Implementation of the requested addition of this disregard would have little impact on the local administration of the program by social services. Individuals would maintain their Medicaid coverage and yet have some additional funds to provide for nonmedical needs not covered by the Medicaid Program. Therefore, this change would be relatively transparent to both the recipient and the social services system.

Issues: There are no disadvantages to the public or the Commonwealth in this regulation. The advantage is to low-income citizens by allowing for the disregard of a temporary, intermittent source of income that would cause a barrier to services to which they are otherwise eligible and should be able to access.

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

Summary of the Proposed Amendments to Regulation. The proposed regulations will add to Medicaid eligibility rules a disregard for income earned from temporary employment with the United States Census Bureau in completing a decennial census.

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

Estimated Economic Impact. The United States Census Bureau has advised states that it will start hiring temporary workers in 2009 to conduct the upcoming decennial census. Under current regulations, an existing Medicaid recipient may experience interruption in his or her eligibility due to the

temporary income earned from the Census Bureau. In order to maintain uninterrupted eligibility of existing recipients, the proposed regulations will add to Medicaid eligibility rules a disregard for income earned from temporary employment with the United States Census Bureau in completing a decennial census.

The Department of Medical Assistance Services has no estimate for the number of Medicaid recipients who may be temporarily hired by the Census Bureau. However, temporary interruption in the Medicaid coverage is potentially more costly than uninterrupted coverage due to the possibility of emergency care and deterioration of chronic conditions if care is not continuous. There may also be some administrative savings from eliminating disenrollment and reenrollment of the same individuals during the temporary employment with the Census Bureau.

Businesses and Entities Affected. The proposed regulations apply to Medicaid enrollees. The number of Medicaid enrollees who may be temporarily hired by the Census Bureau is not known.

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

Projected Impact on Employment. The proposed regulations will remove a disincentive from regulations that may discourage some Medicaid enrollees to obtain temporary employment with the Census Bureau. Thus, the proposed changes are expected to increase labor supply.

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

Small Businesses: Costs and Other Effects. The proposed regulations are not anticipated to create any small business costs and other affects.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulations are not expected to have any adverse effect on small businesses.

Real Estate Development Costs. The proposed regulations are not expected to create any 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 economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Medicaid Eligibility Income Disregards (12VAC30-40-280 and 12VAC30-40-345).

Summary:

The Department of Medical Assistance Services (DMAS) is proposing to amend regulations regarding the income disregards utilized in the Medicaid income eligibility determination. Income that is disregarded is not counted in determining an individual's eligibility for the Medicaid program. Currently, individuals eligible for coverage under the Medicaid program are allowed disregards for certain types of income in the determination of their eligibility. The proposed change will add a disregard for income earned from temporary employment with the United States Census Bureau in completing a decennial census.

12VAC30-40-280. More liberal income disregards.

A. For children covered under §§ 1902(a)(10)(A)(i)(III) and 1905(n) of the Social Security Act, the Commonwealth of Virginia will disregard one dollar plus an amount equal to the difference between 100% of the AFDC payment standard for the same family size and 100% of the ~~Federal Poverty Level~~ federal poverty level for the same family size as updated annually in the Federal Register.

B. For ADC-related cases, both categorically and medically needy, any individual or family applying for or receiving assistance shall be granted an income exemption consistent with the Act (§§ 1902(a)(10)(A)(i)(III), (IV), (VI), (VII); §§ 1902(a)(10)(A)(ii)(VIII), (IX); § 1902(a)(10)(C)(i)(III)). Any interest earned on one interest-bearing savings or investment account per assistance unit not to exceed \$5,000, if the applicant, applicants, recipient or recipients designate that the account is reserved for purposes related to self-sufficiency, shall be exempt when determining eligibility for medical assistance for so long as the funds and interest remain on deposit in the account. For purposes of this section,

"purposes related to self-sufficiency" shall include, but are not limited to, (i) paying for tuition, books, and incidental expenses at any elementary, secondary, or vocational school, or any college or university; (ii) for making down payment on a primary residence; or (iii) for establishment of a commercial operation that is owned by a member of the Medicaid assistance unit.

C. For the group described in §§ 1902(a)(10)(A)(i)(VII) and 1902(l)(1)(D), income in the amount of the difference between 100% and 133% of the ~~Federal Poverty Level~~ federal poverty level (as revised annually in the Federal Register) is disregarded.

D. For aged, blind, and disabled individuals, both categorically and medically needy, with the exception of the special income level group of institutionalized individuals, the Commonwealth of Virginia shall disregard the value of in-kind support and maintenance when determining eligibility. In-kind support and maintenance means food, clothing, or shelter or any combination of these provided to an individual.

E. For all categorically needy and medically needy children covered under the family and children covered groups, (§§ 1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), 1902(a)(10)(A)(ii)(VIII), 1902(a)(10)(C)(ii)(I) and 1905(n) of the Act), the Commonwealth will disregard all earned income of a child under the age of 19 who is a student.

F. For all categorically needy and medically needy individuals covered under the family and children covered groups (§§ 1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(i)(V), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), 1902(a)(10)(A)(ii)(VIII), 1902(a)(10)(C)(ii)(I) and 1905(n) of the Act), the Commonwealth will disregard the fair market value of all in-kind support and maintenance as income in determining financial eligibility. In-kind support and maintenance means food, clothing or shelter or any combination of these provided to an individual.

G. For aged, blind and disabled individuals, both categorically and medically needy, with the exception of the special income level group of institutionalized individuals, the Commonwealth of Virginia shall disregard the value of income derived from temporary employment with the United States Census Bureau for a decennial census.

H. For all categorically needy and medically needy individuals covered under the family and children covered groups (§§ 1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(i)(V), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), 1902(a)(10)(A)(ii)(VIII), 1902(a)(10)(C)(ii)(I) and 1905(n) of the Act), the Commonwealth will disregard income derived

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from the temporary employment with the United States Census Bureau for a decennial census.

12VAC30-40-345. Eligibility under § 1931 of the Act.

A. The state covers low-income families and children under § 1931 of the Act as follows:

AFDC children age 18 who are full-time students in a secondary school or in the equivalent level of vocational or technical training.

B. In determining eligibility for Medicaid, the agency uses the AFDC standards and methodologies in effect as of July 16, 1996, with the following modifications.

1. The agency applies higher income standards than those in effect as of July 16, 1996, increased by no more than the percentage increases in the CPI-U since July 16, 1996. The agency increases the July 16, 1996, income standards shown in 12VAC30-40-220 by the annual increase in the CPI beginning July 1, 2001.

2. The agency uses less restrictive income or resource methodologies than those in effect as of July 16, 1996. The agency does not consider resources in determining eligibility. The agency disregards all earned income of a child under the age of 19 who is a student. The agency disregards the fair market value of all in-kind support and maintenance as income in determining financial eligibility for the above referenced group. The agency disregards income earned from temporary employment with the United States Census Bureau for a decennial census.

3. The income or resource methodologies that the less restrictive methodologies replace are as follows:

a. Resources. The family resource limit was \$1,000. Additionally, any applicant or recipient may have or establish one savings or investment account not to exceed \$5,000 if the applicant or recipient designates that the account is reserved for purposes related to self-sufficiency. Any funds deposited in the account and any interest earned on or appreciation in the value of the funds shall be exempt when determining eligibility for as long as the funds and interest on or appreciation in value of remain in the account. Any amounts withdrawn and used for purposes related to self-sufficiency shall be exempt. For purposes of this section, "purposes related to self-sufficiency" shall include, but is not limited to, paying for tuition, books and incidental expenses at any elementary, secondary or vocational school or any college or university; making down payment on a primary residence; or establishing a commercial operation that is owned by a member of the Medicaid assistance unit.

b. Income. Any interest or appreciation earned on one interest-bearing savings account per medical assistance unit not to exceed \$5,000 at a financial institution, if the

applicant or recipient designates that the account is reserved for the purpose of paying for tuition, books, and incidental expenses at any elementary, secondary or vocational school or any college or university, or for making down payment on a primary residence or for business incubation, shall be exempt when determining eligibility for medical assistance for as long as the funds and interest remain on deposit in the account. For purposes of this section, "business incubation" means the initial establishment of a commercial operation owned by a member of the Medicaid assistance unit.

c. Income earned by a child under the age of 19 who is a student was counted in determining eligibility in accordance with the AFDC income methodologies that were in effect as of July 16, 1996.

d. The fair market value of in-kind support and maintenance is counted as income when evaluating the financial eligibility of the above-referenced group. In-kind support and maintenance means food, clothing or shelter or any combination of these provided to an individual.

C. The agency continues to apply the following waivers of the provisions of Part A of Title IV in effect as of July 16, 1996, or submitted prior to August 22, 1996, and approved by the secretary on or before July 1, 1997. For individuals who receive TANF benefits and meet the requirements of Virginia's § 1115 waiver for the Virginia Independence Program, the agency continues to apply the following waivers of the provisions of Part A of Title IV in effect as of July 16, 1996, or submitted prior to August 22, 1996, and approved by the secretary on or before July 1, 1997. The waiver contains the following more liberal income disregards:

Earned income will be disregarded so long as the earnings plus the AFDC benefits are equal to or less than 100% of the Federal Income Poverty Guidelines. For any month in which earnings plus the AFDC standard of payment for the family size exceed the Federal Poverty Income Guidelines for a family of the same size, earned income above 100% of the Federal Poverty Income Guidelines shall be counted.

These waivers will apply only to TANF cash assistance recipients. These waivers will be continued only for as long as eligibility for TANF was established under the welfare reform demonstration project for which these waivers were originally approved.

VA.R. Doc. No. R09-1610; Filed January 14, 2009, 10:50 a.m.

Final Regulation

Title of Regulation: **12VAC30-120. Waivered Services (amending 12VAC30-120-370, 12VAC30-120-380).**

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

Effective Date: March 4, 2009.

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

Summary:

The amendments, generally referred to as Phase I of the Integration of Acute and Long-Term Care, permit persons who become newly enrolled home-based and community-based care (CBC) waiver recipients (HIV-AIDS, Individual and Family Developmental Disabilities Support (IFDDS), Mental Retardation (MR), Elderly or Disabled with Consumer Direction (EDCD), Day Support, and Alzheimer's Waiver programs) to retain their enrollment in their managed care organization for purposes of obtaining needed acute medical care. Excluded from this change are persons newly admitted to the Technology Assisted waiver, to nursing facilities, and those persons who become dual eligibles (eligible for both Medicare and Medicaid). Prior to the agency's current emergency regulation, these persons have been disenrolled from their managed care organization (once they qualify for certain CBC waivers) and have been required to seek needed acute care services in the unmanaged fee-for-service environment. The persons affected by this change will have their home-based and community-based waiver services, including necessary transportation to waiver services, reimbursed by the Department of Medical Assistance Services (DMAS) through a fee-for-service mechanism. The managed care organizations will be financially responsible for these affected persons' acute medical care.

The changes made to the proposed regulation add language to further clarify the existing regulation or to conform the existing regulation to the newly approved federal 1915(b) waiver from CMS. The changes include clarification of recipients excluded from managed care, the preassignment to the managed care enrollment process, defining the newborn enrollment period, and adding midwife as an obstetrical provider.

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.

12VAC30-120-370. Medallion II enrollees.

A. DMAS shall determine enrollment in Medallion II. Enrollment in Medallion II is not a guarantee of continuing eligibility for services and benefits under the Virginia Medical Assistance Services Program. DMAS reserves the right to exclude from participation in the Medallion II managed care program any recipient who has been consistently noncompliant with the policies and procedures of managed care or who is threatening to providers, MCOs, or

DMAS. There must be sufficient documentation from various providers, the MCO, and DMAS of these noncompliance issues and any attempts at resolution. Recipients excluded from Medallion II through this provision may appeal the decision to DMAS.

B. The following individuals shall be excluded (as defined in 12VAC30-120-360) from participating in Medallion II [or will be disenrolled from Medallion II if any of the following apply]. Individuals not meeting the exclusion criteria must participate in the Medallion II program.

1. Individuals who are inpatients in state mental hospitals;
2. Individuals who are approved by DMAS as inpatients in long-stay hospitals, nursing facilities, or intermediate care facilities for the mentally retarded;
3. Individuals who are placed on spend-down;
4. Individuals who are participating in the family planning waiver, ~~and~~ or in federal waiver programs for home-based and community-based Medicaid coverage prior to managed care enrollment;
5. Individuals who are participating in foster care or subsidized adoption programs;
6. Individuals under age 21 who are [either] enrolled in DMAS authorized [~~residential treatment or~~] treatment foster care programs [as defined in 12VAC30-60-170 A, or who are approved for DMAS residential facility Level C programs as defined in 12VAC30-130-860];
7. Newly eligible individuals who are in the third trimester of pregnancy and who request exclusion within a department-specified timeframe of the effective date of their MCO enrollment. Exclusion may be granted only if the member's obstetrical provider [~~(physician or hospital)~~ (e.g., physician, hospital, midwife)] does not participate with the enrollee's assigned MCO. Exclusion requests made during the third trimester may be made by the recipient, MCO, or provider. DMAS shall determine if the request meets the criteria for exclusion. Following the end of the pregnancy, these individuals shall be required to enroll to the extent they remain eligible for Medicaid;
8. Individuals, other than students, who permanently live outside their area of residence for greater than 60 consecutive days except those individuals placed there for medically necessary services funded by the MCO;
9. Individuals who receive hospice services in accordance with DMAS criteria;
10. Individuals with other comprehensive group or individual health insurance coverage, including Medicare, insurance provided to military dependents, and any other insurance purchased through the Health Insurance Premium Payment Program (HIPP);

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11. Individuals requesting exclusion who are inpatients in hospitals, other than those listed in subdivisions 1 and 2 of this subsection, at the scheduled time of [MCO] enrollment or who are scheduled for inpatient hospital stay or surgery within 30 calendar days of the [MCO] enrollment effective date. The exclusion shall remain effective until the first day of the month following discharge [. This exclusion reason shall not apply to recipients admitted to the hospital while already enrolled in a department-contracted MCO .];

12. Individuals who request exclusion during preassignment to an MCO or within a time set by DMAS from the effective date of their MCO enrollment, who have been diagnosed with a terminal condition and who have a life expectancy of six months or less. The client's physician must certify the life expectancy;

13. Certain individuals between birth and age three certified by the Department of Mental Health, Mental Retardation and Substance Abuse Services as eligible for services pursuant to Part C of the Individuals with Disabilities Education Act (20 USC § 1471 et seq.) who are granted an exception by DMAS to the mandatory Medallion II enrollment;

14. Individuals who have an eligibility period that is less than three months;

15. Individuals who are enrolled in the Commonwealth's Title XXI SCHIP program;

16. Individuals who have an eligibility period that is only retroactive; and

17. Children enrolled in the Virginia Birth-Related Neurological Injury Compensation Program established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 of the Code of Virginia.

C. Individuals enrolled with a MCO [~~that~~ who] subsequently meet one or more of the aforementioned criteria during MCO enrollment shall be excluded from MCO participation as determined by DMAS, with the exception of those who subsequently become recipients in the federal long-term care waiver programs, as otherwise defined elsewhere in this chapter, for home-based and community-based Medicaid coverage (AIDS, IFDDS, MR, EDCD, Day Support, or Alzheimers, or as may be amended from time to time). These individuals shall receive acute and primary medical services via the MCO and shall receive waiver services and related transportation to waiver services via the fee-for-service program.

Individuals excluded from mandatory managed care enrollment shall receive Medicaid services under the current fee-for-service system. When enrollees no longer meet the criteria for exclusion, they shall be required to enroll in the appropriate managed care program.

D. Medallion II managed care plans shall be offered to recipients, and recipients shall be enrolled in those plans, exclusively through an independent enrollment broker under contract to DMAS.

~~D.~~ E. Clients shall be enrolled as follows:

1. All eligible persons, except those meeting one of the exclusions of subsection B of this section, shall be enrolled in Medallion II.

2. Clients shall receive a Medicaid card from DMAS, and shall be provided authorized medical care in accordance with DMAS' procedures after Medicaid eligibility has been determined to exist.

3. Once individuals are enrolled in Medicaid, they will receive a letter indicating that they may select one of the contracted MCOs. These letters shall indicate a preassigned MCO, determined as provided in subsection ~~E~~ F of this section, in which the client will be enrolled if he does not make a selection within a period specified by DMAS of not less than 30 days. [Recipients who are enrolled in one mandatory MCO program who immediately become eligible for another mandatory MCO program are able to maintain consistent enrollment with their currently assigned MCO, if available. These recipients will receive a notification letter including information regarding their ability to change health plans under the new program.]

4. Any newborn whose mother is enrolled with an MCO at the time of birth shall be considered an enrollee of that same MCO for the newborn enrollment period. [The newborn enrollment period is defined as the birth month plus two months following the birth month.] This requirement does not preclude the enrollee, once he is assigned a Medicaid identification number, from disenrolling from one MCO to another in accordance with subdivision ~~F~~ G 1 of this section.

The newborn's continued enrollment with the MCO is not contingent upon the mother's enrollment. Additionally, if the MCO's contract is terminated in whole or in part, the MCO shall continue newborn coverage if the child is born while the contract is active, until the newborn receives a Medicaid number or for the newborn enrollment period, whichever timeframe is earlier. Infants who do not receive a Medicaid identification number prior to the end of the newborn enrollment period will be disenrolled. Newborns who remain eligible for participation in Medallion II will be reenrolled in an MCO through the preassignment process upon receiving a Medicaid identification number.

5. Individuals who lose then regain eligibility for Medallion II within 60 days will be reenrolled into their previous MCO without going through preassignment and selection.

~~E~~. E. Clients who do not select an MCO as described in subdivision ~~D~~ E 3 of this section shall be assigned to an MCO as follows:

1. Clients are assigned through a system algorithm based upon the client's history with a contracted MCO.
2. Clients not assigned pursuant to subdivision 1 of this subsection shall be assigned to the MCO of another family member, if applicable.
3. All other clients shall be assigned to an MCO on a basis of approximately equal number by MCO in each locality.
4. In areas where there is only one contracted MCO, recipients have a choice of enrolling with the contracted MCO or the PCCM program. All eligible recipients in areas where one contracted MCO exists, however, are automatically assigned to the contracted MCO. Individuals are allowed 90 days after the effective date of new or initial enrollment to change from either the contracted MCO to the PCCM program or vice versa.

5. DMAS shall have the discretion to utilize an alternate strategy for enrollment or transition of enrollment from the method described in this section for expansions to new client populations, new geographical areas, expansion through procurement, or any or all of these [; such alternate strategy shall comply with federal waiver requirements] .

~~F~~. G. Following their initial enrollment into an MCO or PCCM program, recipients shall be restricted to the MCO or PCCM program until the next open enrollment period, unless appropriately disenrolled or excluded by the department (as defined in 12VAC30-120-360).

1. During the first 90 calendar days of enrollment in a new or initial MCO, a client may disenroll from that MCO to enroll into another MCO or into PCCM, if applicable, for any reason. Such disenrollment shall be effective no later than the first day of the second month after the month in which the client requests disenrollment.
2. During the remainder of the enrollment period, the client may only disenroll from one MCO into another MCO or PCCM, if applicable, upon determination by DMAS that good cause exists as determined under subsection ~~H~~ I of this section.

~~G~~. H. The department shall conduct an annual open enrollment for all Medallion II participants. The open enrollment period shall be the 60 calendar days before the end of the enrollment period. Prior to the open enrollment period, DMAS will inform the recipient of the opportunity to remain with the current MCO or change to another MCO, without cause, for the following year. In areas with only one contracted MCO, recipients will be given the opportunity to select either the MCO or the PCCM program. Enrollment selections will be effective on the first day of the next month

following the open enrollment period. Recipients who do not make a choice during the open enrollment period will remain with their current MCO selection.

~~H~~. I. Disenrollment for cause may be requested at any time.

1. After the first 90 days of enrollment in an MCO, clients must request disenrollment from DMAS based on cause. The request may be made orally or in writing to DMAS and must cite the reasons why the client wishes to disenroll. Cause for disenrollment shall include the following:

- a. A recipient's desire to seek services from a federally qualified health center which is not under contract with the recipient's current MCO, and the recipient (i) requests a change to another MCO that subcontracts with the desired federally qualified health center or (ii) requests a change to the PCCM, if the federally qualified health center is contracting directly with DMAS as a PCCM;
- b. Performance or nonperformance of service to the recipient by an MCO or one or more of its providers which is deemed by the department's external quality review organizations to be below the generally accepted community practice of health care. This may include poor quality care;
- c. Lack of access to a PCP or necessary specialty services covered under the State Plan or lack of access to providers experienced in dealing with the enrollee's health care needs;
- d. A client has a combination of complex medical factors that, in the sole discretion of DMAS, would be better served under another contracted MCO or PCCM program, if applicable, or provider;
- e. The enrollee moves out of the MCO's service area;
- f. The MCO does not, because of moral or religious objections, cover the service the enrollee seeks;
- g. The enrollee needs related services to be performed at the same time; not all related services are available within the network, and the enrollee's primary care provider or another provider determines that receiving the services separately would subject the enrollee to unnecessary risk; or
- h. Other reasons as determined by DMAS through written policy directives.

2. DMAS shall determine whether cause exists for disenrollment. Written responses shall be provided within a timeframe set by department policy; however, the effective date of an approved disenrollment shall be no later than the first day of the second month following the month in which the enrollee files the request, in compliance with 42 CFR 438.56.

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3. Cause for disenrollment shall be deemed to exist and the disenrollment shall be granted if DMAS fails to take final action on a valid request prior to the first day of the second month after the request.

4. The DMAS determination concerning cause for disenrollment may be appealed by the client in accordance with the department's client appeals process at 12VAC30-110-10 through 12VAC30-110-380.

5. The current MCO shall provide, within two working days of a request from DMAS, information necessary to determine cause.

6. Individuals enrolled with a MCO [~~that~~ who] subsequently meet one or more of the exclusions in subsection B of this section during MCO enrollment shall be disenrolled as appropriate by DMAS, with the exception of those who subsequently become recipients into the AIDS, IFDDS, MR, EDCD, Day Support, or Alzheimer's federal waiver programs for home-based and community-based Medicaid coverage. These individuals shall receive acute and primary medical services via the MCO and shall receive waiver services and related transportation to waiver services via the fee-for-service program.

Individuals excluded from mandatory managed care enrollment shall receive Medicaid services under the current fee-for-service system. When enrollees no longer meet the criteria for exclusion, they shall be required to enroll in the appropriate managed care program.

12VAC30-120-380. Medallion II MCO responsibilities.

A. The MCO shall provide, at a minimum, all medically necessary covered services provided under the State Plan for Medical Assistance and further defined by written DMAS regulations, policies and instructions, except as otherwise modified or excluded in this part.

1. Nonemergency services provided by hospital emergency departments shall be covered by MCOs in accordance with rates negotiated between the MCOs and the emergency departments.

2. Services that shall be provided outside the MCO network shall include those services identified and defined by the contract between DMAS and the MCO. Services reimbursed by DMAS include dental and orthodontic services for children up to age 21; for all others, dental services (as described in 12VAC30-50-190), school health services (as defined in 12VAC30-120-360) ~~and~~, community mental health services (rehabilitative, targeted case management and substance abuse services); ~~and long-term care services provided under the § 1915(c) home-based and community-based waivers including related transportation to such authorized waiver services.~~

3. The MCOs shall pay for emergency services and family planning services and supplies whether they are provided inside or outside the MCO network.

B. EPSDT services shall be covered by the MCO. The MCO shall have the authority to determine the provider of service for EPSDT screenings.

C. The MCOs shall report data to DMAS under the contract requirements, which may include data reports, report cards for clients, and ad hoc quality studies performed by the MCO or third parties.

D. Documentation requirements.

1. The MCO shall maintain records as required by federal and state law and regulation and by DMAS policy. The MCO shall furnish such required information to DMAS, the Attorney General of Virginia or his authorized representatives, or the State Medicaid Fraud Control Unit on request and in the form requested.

2. Each MCO shall have written policies regarding enrollee rights and shall comply with any applicable federal and state laws that pertain to enrollee rights and shall ensure that its staff and affiliated providers take those rights into account when furnishing services to enrollees in accordance with 42 CFR 438.100.

E. The MCO shall ensure that the health care provided to its clients meets all applicable federal and state mandates, community standards for quality, and standards developed pursuant to the DMAS managed care quality program.

F. The MCOs shall promptly provide or arrange for the provision of all required services as specified in the contract between the state and the contractor. Medical evaluations shall be available within 48 hours for urgent care and within 30 calendar days for routine care. On-call clinicians shall be available 24 hours per day, seven days per week.

G. The MCOs must meet standards specified by DMAS for sufficiency of provider networks as specified in the contract between the state and the contractor.

H. Each MCO and its subcontractors shall have in place, and follow, written policies and procedures for processing requests for initial and continuing authorizations of service. Each MCO and its subcontractors shall ensure that any decision to deny a service authorization request or to authorize a service in an amount, duration, or scope that is less than requested, be made by a health care professional who has appropriate clinical expertise in treating the enrollee's condition or disease. Each MCO and its subcontractors shall have in effect mechanisms to ensure consistent application of review criteria for authorization decisions and shall consult with the requesting provider when appropriate.

I. In accordance with 42 CFR 447.50 through 42 CFR 447.60, MCOs shall not impose any cost sharing obligations on enrollees except as set forth in 12VAC30-20-150 and 12VAC30-20-160.

J. An MCO may not prohibit, or otherwise restrict, a health care professional acting within the lawful scope of practice, from advising or advocating on behalf of an enrollee who is his patient in accordance with 42 CFR 438.102.

K. An MCO that would otherwise be required to reimburse for or provide coverage of a counseling or referral service is not required to do so if the MCO objects to the service on moral or religious grounds and furnishes information about the service it does not cover in accordance with 42 CFR 438.102.

VA.R. Doc. No. R07-729; Filed January 14, 2009, 10:51 a.m.

TITLE 16. LABOR AND EMPLOYMENT

VIRGINIA WORKERS' COMPENSATION COMMISSION

Final Regulation

Titles of Regulations: **16VAC30-90. Procedural Regulations for Filing First Reports Under the Virginia Workers' Compensation Act (repealing 16VAC30-90-10 through 16VAC30-90-80).**

16VAC30-91. Claims Reporting (adding 16VAC30-91-10, 16VAC30-91-20).

Statutory Authority: §§ 65.2-201 and 65.2-900 of the Code of Virginia.

Effective Date: March 4, 2009.

Agency Contact: Matthew Bryant, Director, Technology Alignment Program, Virginia Workers' Compensation Commission, 1000 DMV Drive, Richmond, VA 23220, telephone (804) 367-2253, FAX (877) 366-5495, or email matthew.bryant@vwc.state.va.us.

Summary:

This action repeals 16VAC30-90 and promulgates 16VAC30-91 to conform the electronic filing method for mandatory reports to the commission to the industry standard for such reports.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

CHAPTER 91 CLAIMS REPORTING

16VAC30-91-10. Definitions.

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

"Claims reports" means FROI and SROI reports concerning an injury filed by or on behalf of an insurer or self-insurer with the commission pursuant to the requirements set forth in the implementation guide.

"Commission" means the Virginia Workers' Compensation Commission.

"EDI" or "electronic data interchange" means the method used to exchange data electronically between the commission and those organizations submitting claims reports to the commission.

"Filed electronically" means filed with the commission through EDI or through the Internet portal established by the commission for submission of claims reports, pursuant to the requirements set forth in the implementation guide.

"First report of injury" or "FROI" means the initial claims report filed with the commission concerning an injury.

"Implementation guide" means the Electronic Data Interchange (EDI) Implementation Guide, May 1, 2008 Edition, which contains requirements published and updated by the commission to be followed when claims reports are filed electronically with the commission.

"Insurer" means a company licensed to write workers' compensation coverage in Virginia.

"Minor injury" means an injury that meets none of the following seven reporting criteria:

1. Lost time or partial disability exceeding seven days.
2. Medical expenses exceeding \$1,000.
3. Any denial of compensability.
4. Any disputed issues.
5. An accident that results in death.
6. Any permanent disability or disfigurement.
7. Any specific request made by the commission.

"Self-insurer" means an entity providing workers' compensation coverage directly to its employees based on formal approval by either the Virginia Workers' Compensation Commission or the State Corporation Commission.

"Subsequent report of injury" or "SROI" means a claims report filed with the commission after a FROI, which reports

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medical or indemnity payment activity about an injury or a decision to deny or no longer make payment on an injury.

16VAC30-91-20. Procedures for filing claims reports.

A. By no later than July 1, 2009, all claims reports must be filed electronically with the commission.

B. The commission shall publish an implementation guide describing the requirements to be followed when claims reports are filed electronically with the commission. Any changes or updates to the implementation guide shall be published by the commission on an annual basis on or about September 1.

C. A FROI must be filed on all injuries in accordance with the implementation guide.

D. SROI reports concerning denials, indemnity payments, medical payments, and suspensions must be filed on all

injuries that do not meet the definition of a minor injury in accordance with the implementation guide.

E. An injury that meets the definition of a minor injury may be reported as such to the commission on a FROI in accordance with the implementation guide. If an injury that is reported to the commission as being a minor injury subsequently fails to meet the definition of a minor injury, then an updated FROI on that injury, followed by required SROI reports, must be filed with the commission immediately, in accordance with the implementation guide.

NOTICE: The forms used in administering the above regulation are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS (16VAC30-91)

First Report of Injury (rev. 5/1/08).

First Report of Injury

For questions contact your Claim Administrator
 See definitions on the reverse of this form

Employer		
1. Employer's Legal Name		2. Federal Employer Identification Number
3. Employer Mailing Address		
4. Name/FEIN of Entity on Policy		5. Nature of Business
6. Name and Address of Insurer or Self-Insurer for this Claim		7. Policy Number
Time and Place of Accident		
8. Location Where Accident Occurred		9. Date of Injury
		10. Hour of Injury <input type="text"/> a.m. <input type="text"/> p.m.
11. Date Injury or Illness Reported		12. If Fatal, Give Date of Death
		13. If Fatal, Give Marital Status <input type="checkbox"/> Single <input type="checkbox"/> Divorced <input type="checkbox"/> Married <input type="checkbox"/> Widowed
		14. If Fatal, Give Number of Dependent Children
Employee		
15. Name of Employee (Last, First, Middle)		16. Phone Number
17a. Employee ID Number		
18. Employee Mailing Address		17b. Type of ID Number <input type="checkbox"/> Social Security Number <input type="checkbox"/> Employment Visa <input type="checkbox"/> Green Card <input type="checkbox"/> Passport Number <input type="checkbox"/> Unknown
19. Occupation at Time of Injury or Illness		20. Date of Birth
		21. Sex <input type="checkbox"/> Male <input type="checkbox"/> Female
Nature and Cause of Accident		
22. Machine, Tool, or Object Causing Injury or Illness		
23. Describe Fully How Injury or Illness Occurred		
24. Describe Nature of Injury, Occupational Disease, or Illness, Including Parts of Body Affected		

First Report of Injury
 (rev. 05/01/08)

Definitions of First Report of Injury Fields

1. **Employer's Legal Name:** The legal name of the business entity that is filing the claim, hired the employee and provided direction and remuneration to the employee at the time of injury; or as jurisdictionally defined for volunteers and other non-paid classes of employees. In a leasing situation, this would be the lessor. If the employer is a client company of a PEO, fill in the client company's name here.
2. **Federal Employer Identification Number:** The Federal Employer Identification Number (FEIN) of the employer where the employee was employed at the time of the injury.
3. **Employer Mailing Address:** The mailing address as provided by the employer to the claim administrator.
4. **Name/FEIN of Entity on Policy:** The named entity of the policy. Typically, the insured name is the parent company in a hierarchically structured organization as well as the Federal Employer Identification Number (FEIN) corresponding to and uniquely identifying the insured. If represented by a PEO, it should be named here.
5. **Nature of Business:** The nature of the employer's business. This will be converted by the Claim Administrator to a North American Industry Classification System (NAICS) code.
6. **Name and Address of Insurer or Self-Insurer for this Claim:** The legal name of the insurance company, self-insured, or guarantee fund assuming the employer's financial responsibility for this claim as well as the mailing address of the claim adjusting office handling the claim. This will be the carrier's claim adjusting office if there is no Third Party/Claim Administrator.
7. **Policy Number:** The number identifying the coverage policy in effect for the claim. If self-insured or uninsured leave field blank.
8. **Location Where Accident Occurred:** The location where the accident or injury occurred. This will be converted to postal code.
9. **Date of Injury:** For traumatic injury, the date on which the accident occurred. For occupational disease or cumulative injury, the date of injury is the date on which the diagnosis is made and communicated to the employee.
10. **Hour of Injury:** The time of the accident/injury.
11. **Date Injury or Illness Reported:** The earlier of the date that the accident was reported to the employer or the date that the employer had actual knowledge of an accident or injury.
12. **If Fatal, Give Date of Death:** The date the employee died.
13. **If Fatal, Give Marital Status:** The employee's marital status as of the date of the injury.
14. **If Fatal, Give Number of Dependent Children:** The number of individuals relying on the employee for economic support as defined by the jurisdiction's statute.
15. **Name of Employee:** The employee's legally recognized last name and first name. If available provide middle name or initial.
16. **Phone Number:** The phone number where the employee can be reached.
- 17a. **Employee ID Number:** An identification number unique to the employee.
- 17b. **Type of ID Number:** Identifies the type of employee ID being transmitted. If you do not know the ID of the employee and select "Unknown", your insurer has been instructed to submit a jurisdiction-defined ID to the Commission.
18. **Employee Mailing Address:** The mailing address of the employee.
19. **Occupation at Time of Injury or Illness:** The primary occupation in which the employee was engaged at the time of accident/injury, or injurious exposure. This will be converted by the Claim Administrator to a Standard Occupational Classification (SOC) code.
20. **Date of Birth:** The date the employee was born.
21. **Sex:** The sex of the employee.
22. **Machine, Tool, or Object Causing Injury or Illness:** The cause of the injury based on the information available to the claim administrator.
23. **Describe Fully How Injury or Illness Occurred:** A free form description of how the accident occurred and the resulting injuries.
24. **Describe Nature of Injury, Occupational Disease, or Illness, Including Parts of Body Affected:** The nature of the injury sustained by the employee as well as the part(s) of the body injured.

DOCUMENTS INCORPORATED BY REFERENCE
(16VAC30-91)

Electronic Data Interchange (EDI) Implementation Guide, Virginia Workers' Compensation Commission, May 1, 2008 Edition.

VA.R. Doc. No. R08-1094; Filed January 14, 2009, 11:53 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE SEWAGE SYSTEM PROFESSIONALS

Proposed Regulation

Title of Regulation: **18VAC160-20. Board for Waterworks and Wastewater Works Operators Regulations (amending 18VAC160-20-10, 18VAC160-20-90, 18VAC160-20-95, 18VAC160-20-106, 18VAC160-20-109, 18VAC160-20-120 through 18VAC160-20-150; repealing 18VAC160-20-85).**

Statutory Authority: §§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Public Hearing Information:

April 15, 2009 - 10 a.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, 2nd Floor, Richmond, VA

Public Comments: Public comments may be submitted until April 17, 2009.

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 23233-1485, telephone (804) 367-2648, FAX (804) 527-4297, or email waterwasteoper@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia states that the board has the power and duty "to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board. The regulations shall not be in conflict with the purposes and intent of this chapter or of Chapters 1 (§ 54.1-100 et seq.) and 3 (§ 54.1-300 et seq.) of this title."

Section 54.1-2301 B of the Code of Virginia states that the board shall examine operators and issue licenses. The licenses may be issued in specific operator classifications to attest to the competency of an operator to supervise and operate waterworks and wastewater works while protecting

the public health, welfare and property and conserving and protecting the water resources of the Commonwealth.

Purpose: The technology used to treat water and wastewater continues to evolve over time. For this reason, the board decided that a thorough review of its existing regulations in light of current industry practice is necessary. That need is best illustrated by the college degrees and degree programs designed to prepare students to work in the environmental protection field. Many, if not most, of these degree fields did not exist or were very new when the board last conducted a general review of its regulations. The same is true of the facility classification standards in the current regulations. A review will identify any necessary modifications to reflect current practice and assure operation by competent individuals.

Substance: 18VAC160-20-10 is amended to clarify definitions that differentiate between waterworks and wastewater works licensees as well as expand on the definition of "structured training activity."

18VAC160-20-85 is repealed because the time period affecting restricted Class VI waterworks licenses has expired.

18VAC160-20-90 is amended to include all specific qualifications for licensure of both waterworks and wastewater works operators. The amendments replace Roman numerals with Arabic numerals, specify the requirements for experience verification, expand education to included master's degrees as well as related science degrees, and modify the experience and experience substitution requirements.

18VAC160-20-95 is amended to emphasize that only nonclassified facility operation experience is applicable to provisional licensure.

18VAC160-20-106 is amended to specify that the regulant's act of submitting to renew a license is the equivalent of an implied declaration that he has already fulfilled the board's continued professional education (CPE) requirement.

18VAC160-20-109 is amended to include CPE for all regular and provisional licensed facility operators. The amendments also specify that CPE must be appropriate to the license held and safety subjects may not count for more than one-half of the CPE requirement. The amendments extend the amount of time a regulant is required to maintain CPE completion records, eliminate the possibility of using the same CPE course for credit more than once during a license cycle, and provide CPE credit for course instructors.

18VAC160-20-120 is amended to replace Roman numerals with Arabic numerals and to specify the particular type of waterworks facilities that may be operated by a Class 1 waterworks licensee.

18VAC160-20-130 is amended to replace Roman numerals with Arabic numerals and to specify the particular type of

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wastewater works facilities that may be operated by a Class 1 wastewater works licensee.

18VAC160-20-140 is amended to clarify the scope of the board's disciplinary authority over fraudulent attempts to obtain or renew a license.

18VAC160-20-150 is amended to replace Roman numerals with Arabic numerals, remove self-assessment as a course completion requirement, and specify that other assessment techniques must be similar to the aforementioned assessment techniques within the section.

Issues: The primary advantage to the public is the assurance that, as the relevant technology continues to advance, waterworks and wastewater works facilities in Virginia will continue to be operated by individuals whose education and experience includes the relevant changes in technology. These changes are best illustrated by the need for some \$1.4 billion in upgrades to approximately 120 wastewater facilities located in the Chesapeake Bay Watershed to meet EPA water quality improvement standards. Therefore, minimally competent individuals will continue to operate those facilities assuring the continued protection of the health and welfare of the citizens of the Commonwealth.

The primary advantage to the Commonwealth will be the continued successful regulation of competent and licensed individuals operating waterworks and wastewater works facilities throughout Virginia. No disadvantage has been identified.

The proposed amendments allow applicants to meet the licensing educational requirements with degrees in specific as well as related science fields pertinent to the waterworks and wastewater works industry. This may expand the scope of potential applicants while simultaneously ensuring competent applicants and licensees.

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

Summary of the Proposed Amendments to Regulation. The Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals (Board) propose to: 1) add continuing professional education (CPE) as a requirement for wastewater works operator license renewal; 2) limit safety subjects to at most half of qualifying CPE (for both waterworks operator licenses and wastewater works operator licenses); 3) allow the teaching of CPE courses to apply toward CPE credit; 4) allow the development of CPE courses to apply toward CPE credit; 5) add distance learning to the definition of "Structured training activity"; 6) repeal obsolete, repetitive, and contradictory language; and 7) make clarifying changes.

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

Estimated Economic Impact. In order to comply with U.S. Environmental Protection Agency (EPA) requirements waterworks operators have been required to complete CPE via these regulations since 2001. According to the Department of Professional and Occupational Regulation (DPOR), since 2001 it has been anticipated that EPA would make the same requirement for wastewater works operators. EPA has yet to do so.

Nevertheless, the technology associated with wastewater management has been advancing and is expected to continue to advance at a rapid pace. According to DPOR, \$1.4 billion dollars in upgrades to approximately 120 wastewater facilities located in the Chesapeake Bay Watershed are now needed to meet EPA water quality improvement standards. Wastewater works operator license holders will need additional training in order to assure continuing operator competency to operate the new technology and, thereby, protect the Chesapeake Bay Watershed and the public. Not all of Virginia is in the Chesapeake Bay Watershed, but wastewater works in other parts of the Commonwealth will likely upgrade their technology as well eventually, even if it is not as soon as in the Chesapeake Bay Watershed. Thus, the Board proposes to require that wastewater works operators complete CPE during each two-year renewal cycle in order to renew their license.

For each class of licensure, the proposed required amount of CPE per two-year renewal cycle is the same for both waterworks operators and wastewater works operators: 16 contact hours for Class 4, and 20 contact hours for Classes 1, 2, and 3. DPOR states that waterworks and wastewater facilities may conduct and document their own CPE training to meet the needs of their facility, and that training can apply toward the CPE contact hours required for license renewal. The agency also reports that for licensees taking outside CPE "The typical cost of continuing education is from \$30 to \$90 per contact hour." This works out to \$480 to \$1,440 for Class 4 licenses, and \$600 to \$1,800 for Classes 1, 2, and 3. The potential consequences of not requiring CPE for wastewater works operators include the contamination of public and private waters through inadequate work due to ignorance of proper procedures in use of new technology. A significant portion of wastewater works operators would likely keep up with the necessary knowledge to competently practice without the CPE requirement. The proposed requirement for CPE will likely increase that portion though. The increase in number of licensees who remain competent and the increase in depth of relevant knowledge for those who would have been competent anyway is not known; but the benefits from the reduced risk to water quality likely exceeds the costs.

The Board also proposes to limit safety-themed subjects to at most half of qualifying CPE (for both waterworks operator licenses and wastewater works operator licenses). The apparent reasoning is that there has been and should remain a significant emphasis on the important subject of safety, but that other areas that are necessary for competent practice may

be overlooked if CPE is dominated by safety instruction. To the extent that this proposal encourages greater education in advancements in non-safety areas of waterworks and wastewater works operations without compromising safety, this proposal should create a net benefit.

Though the Board proposes to limit the amount of safety-themed qualifying CPE, it also proposes three additional methods of obtaining qualifying CPE: distance learning, the development of license-relevant CPE courses, and the teaching of license-relevant CPE courses. Currently Internet-based courses and other methods of distance learning are not accepted for CPE credit. Under the proposed regulations distance learning can qualify for CPE credit as long as it is determined that it meets all other CPE criteria. This proposed change is clearly beneficial in that it has the potential to reduce travel and time costs for licensees, and may allow relatively isolated licensees greater opportunity to take relevant courses. Developing a course and teaching a class both involve adding depth of understanding. Given that CPE courses developed and/or taught must be pertinent to the license in question to qualify for CPE credit, developing and teaching these courses add depth of knowledge in license-relevant topics. Thus, giving CPE credit for developing and teaching these courses increases knowledge relevant for protecting the public and the proposal creates net benefit.

Businesses and Entities Affected. The proposed amendments affect the 2,583 licensed wastewater works operators in the Commonwealth,¹ wastewater works facilities, colleges that offer instruction relevant to waterworks and wastewater works operations, and the public.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposal to require CPE for wastewater works operator license renewal may moderately increase employment for providers of such instruction.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. As most waterworks operator licensees and wastewater works operator licensees work for public entities, and most license-relevant CPE courses are provided by public entities, the proposed amendments are unlikely to significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. As most waterworks operator licensees and wastewater works operator licensees work for public entities, and most license-relevant CPE courses are provided by public entities, 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.

¹ Data Source: Department of Professional and Occupational Regulation

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

Summary:

The proposed amendments (i) add continuing professional education (CPE) as a requirement for wastewater works operator license renewal; (ii) specify that safety subjects may not count for more than one-half of the CPE requirement for both waterworks operator licenses and wastewater works operator licenses; (iii) allow the development and teaching of CPE courses to apply toward CPE credit; (iv) clarify the scope of the board's disciplinary authority over fraudulent attempts to obtain or renew a license; (v) delineate the types of waterworks and wastewater works facilities that may be operated by a Class I license holder; (vi) add distance learning to the definition of "structured training activity"; (vii) repeal the restricted Class VI waterworks license provisions; and (viii) make other changes for consistency and clarification purposes.

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Part I

Definitions, Licensing and Classification Requirements

18VAC160-20-10. 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 for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals.

"Category" means the two divisions of waterworks and wastewater works operators' licenses, one being waterworks and the second being wastewater works.

"Classification" means the divisions ~~of~~ within each category of waterworks and wastewater works operators' licenses into classes where Class ~~"I"~~ "1" represents the highest classification.

"Classified facility" means a waterworks that has been granted a classification by the Virginia Department of Health or a wastewater works that has been granted a classification by the Virginia Department of Environmental Quality.

"Contact hour" means 50 minutes of participation in a structured training activity.

"Continuing Professional Education (CPE)" means participation in a structured training activity that enables a ~~licensed waterworks operator~~ licensee to maintain and increase the competence required to assure the public's protection.

"Department" means the Virginia Department of Professional and Occupational Regulation.

"Experience" means time spent learning how to physically and theoretically operate the waterworks or wastewater works as an operator-in-training or time spent operating a waterworks or wastewater works for which the operator is currently licensed.

"Licensed operator" means an operator with a license in the category and with a classification equal to or higher than the classification of the waterworks or wastewater works being operated.

"Licensee" means an individual holding a valid license issued by the board.

"Licensure" means a method of regulation whereby the Commonwealth, through the issuance of a license, authorizes a person possessing the character and minimum skills to engage in the practice of a profession or occupation that is unlawful to practice without a license.

"Nonclassified facility" means a facility located in Virginia that has not been classified by the Virginia Department of Health or a facility that has not been classified by the Virginia Department of Environmental Quality.

"Operate" means any act of an individual, ~~which that~~ that may impact on the finished water quality at a waterworks or the plant effluent at a wastewater works.

"Operating staff" means individuals employed or appointed by an owner to work at a waterworks or wastewater works.

"Operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control waterworks or wastewater works operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks or wastewater works.

"Operator-in-training" means an individual employed by an owner to work under the direct supervision and direction of an operator holding a valid license in the proper category and classification for the purpose of gaining experience and knowledge in the duties and responsibilities of an operator of a waterworks or wastewater works. An operator-in-training is not an operator.

"Owner" means the Commonwealth of Virginia, or any political subdivision thereof, any public or private institution, corporation, association, or any other entity organized or existing under the laws of this Commonwealth or of any other state or nation, or any person or group of persons acting individually or as a group, who own, manage, or maintain waterworks or wastewater works.

"Provisional licensee" means an individual holding a valid provisional license issued by the board.

"Provisional licensure" or "provisional license" means a method of regulation whereby the Commonwealth recognizes an individual as having met specific standards but who is not authorized to operate a classified facility until he has met the remaining requirements for licensure and has been issued a license.

"Renewal" means continuing the effectiveness of a license for another period of time.

"Responsible charge" means the designation by the owner of any individual to have the duty and the authority to operate a waterworks or wastewater works.

"Structured training activity" means a formal educational process designed to permit a participant to learn a given subject or subjects through interaction with an instructor in a course, seminar, conference, distance learning, or other performance-oriented format.

"Wastewater works" means a system of (i) sewerage systems or sewage treatment works serving more than 400 persons, as set forth in § 62.1-44.18 of the Code of Virginia;

(ii) sewerage systems or sewage treatment works serving fewer than 400 persons, as set forth in § 62.1-44.18 of the Code of Virginia, if so certified by the State Water Control Board; and (iii) facilities for discharge into state waters of industrial wastes or other wastes, if certified by the State Water Control Board.

"Waterworks" means a system that serves piped water for drinking or domestic use to (i) at least 15 connections or (ii) at least 25 of the same individuals for more than six months out of the year. The term waterworks shall include all structures, equipment, and appurtenances used in the storage, collection, purification, treatment and distribution of pure water, except the piping and fixtures inside the building where such water is delivered.

18VAC160-20-85. ~~Restricted License of Class VI Waterworks. (Repealed.)~~

~~A. The board shall issue a restricted license to operate a Class VI waterworks to the Class VI waterworks owner or the Class VI waterworks owner's designee upon application for such restricted license by the waterworks owner or his designee and provided said application is received by February 15, 2003. Waterworks owners or their designees who fail to apply by February 15, 2003, must apply for a license pursuant to 18VAC160-20-90. A restricted license shall be limited to one license per Class VI waterworks facility. The restricted license is site specific and nontransferable. The restricted license expires three years from the date of issuance and is not subject to renewal.~~

~~B. Each applicant for a restricted license to operate a Class VI waterworks shall apply on the application form provided by the board which establishes that the applicant:~~

- ~~1. Is at least 18 years of age;~~
- ~~2. Has a high school diploma or G.E.D. and six months experience, or has no high school diploma or G.E.D. and has 12 months experience;~~
- ~~3. Is the current operator of a specific Class VI system and does not hold a waterworks license issued by the board; and~~
- ~~4. Understands that the restricted Class VI license that may be issued becomes invalid if he leaves the facility for which the license is sought or is issued a waterworks operator license in any other class.~~

18VAC160-20-90. ~~Licensure by experience and examination~~ Qualifications for licensure – waterworks operator and wastewater works operator.

A. Licensure is based upon having applicable experience and demonstrating minimum required knowledge, skills, and abilities through an examination. Education, training, and experience in the other category may be substituted for the required experience as specified in this section.

~~A. B.~~ Experience. For purposes of this chapter, experience requirements are expressed in terms of calendar periods of full-time employment as an operator or as an operator-in-training at a waterworks or wastewater works in the same category as the license being applied for. ~~All experience claimed on the application for licensure must be certified by the individual's immediate supervisor.~~

1. A year of full-time employment is defined as a minimum of 1,760 hours during a 12-month period or a minimum of 220 workdays in a 12-month period. A workday is defined as attendance at a waterworks or wastewater works to the extent required for proper operation. More than 1,760 hours or 220 work days during a 12-month period will not be considered as more than one year of full-time employment.

2. Experience gained as an operator-in-training must be obtained under the direct supervision of an operator holding a valid license of the same category and of a classification equal to or higher than the classification of the waterworks or wastewater works at which the experience is gained. ~~The supervising operator~~ direct supervisor shall certify the experience on the application form as accurate and relevant to the classification and category of license for which the application is being submitted. In the event that a licensed operator is not available to certify the experience on the application, the experience may be certified by a representative of the facility owner, as defined in 18VAC160-20-10, with first-hand knowledge of the applicant's experience.

3. Partial credit may be given for actual hours of work or workdays experience if the applicant works as an operator or as an operator-in-training less than full time.

4. Experience solely limited to the operation and maintenance of wastewater collection systems and water distribution systems, laboratory work, plant maintenance, and other nonoperating duties shall not be counted as experience as an operator or as an operator-in-training.

5. Experience limited to water distribution system operation and maintenance shall be considered only when applying for a Class ~~V~~ 5 or Class ~~VI~~ 6 waterworks operator license.

~~B. C.~~ Specific requirements for licenses.

1. Specific requirements for a Class ~~VI~~ 6 license. Applicants for licensure as a Class ~~VI~~ 6 waterworks operator shall meet one of the following requirements and pass a board-approved Class 6 examination:

- a. Have (i) a high school diploma or GED and (ii) at least six months of experience as an operator-in-training in a Class ~~VI~~ 6, Class ~~V~~ 5, Class ~~IV~~ 4, Class ~~III~~ 3, Class ~~II~~ 2, or Class ~~I~~ 1 waterworks; or

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b. Have (i) no high school diploma and (ii) at least one year of experience as an operator-in-training in a Class ~~IV~~ 6, Class ~~V~~ 5, Class ~~IV~~ 4, Class ~~III~~ 3, Class ~~II~~ 2, or Class ~~I~~ 1 waterworks.

2. Specific requirements for a Class ~~V~~ 5 license. Applicants for licensure as a Class ~~V~~ 5 waterworks operator shall meet one of the following requirements and pass a board-approved Class 5 examination:

a. Have (i) a high school diploma or GED and (ii) at least six months of experience as an operator-in-training in a Class ~~V~~ 5, Class ~~IV~~ 4, Class ~~III~~ 3, Class ~~II~~ 2, or Class ~~I~~ 1 waterworks; or

b. Have (i) no high school diploma and (ii) at least one year of experience as an operator-in-training in a Class ~~V~~ 5, Class ~~IV~~ 4, Class ~~III~~ 3, Class ~~II~~ 2, or Class ~~I~~ 1 waterworks.

3. Specific requirements for a Class ~~IV~~ 4 license. Applicants for licensure as either a Class ~~IV~~ 4 waterworks or wastewater works operator shall meet one of the following requirements and pass a the appropriate board-approved Class 4 examination:

a. Have (i) a high school diploma or GED and (ii) at least six months of experience as an operator-in-training in a Class ~~IV~~ 4, Class ~~III~~ 3, Class ~~II~~ 2, or Class ~~I~~ 1 waterworks or wastewater works (as appropriate); or

b. Have (i) no high school diploma and (ii) at least one year of experience as an operator-in-training in a Class ~~IV~~ 4, Class ~~III~~ 3, Class ~~II~~ 2, or Class ~~I~~ 1 waterworks or wastewater works (as appropriate).

4. Specific requirements for a Class ~~III~~ 3 license. Applicants for licensure as either a Class ~~III~~ 3 waterworks or wastewater works operator shall meet one of the following requirements and pass a the appropriate board-approved Class 3 examination:

a. Have (i) a bachelor's or master's degree with a major in engineering ~~or~~ engineering technology, or in a related physical, biological, environmental, or chemical science; and (ii) at least one year of experience as an operator-in-training in a Class ~~IV~~ 4, Class ~~III~~ 3, Class ~~II~~ 2, or Class ~~I~~ 1 waterworks or wastewater works (as appropriate); or

~~b. Have (i) a bachelor's degree in engineering or engineering technology, or in physical, biological or chemical science; (ii) a Class IV license; and (iii) a total of at least one year of experience as an operator or operator in training in a Class III, Class II, or Class I waterworks or wastewater works (as appropriate); or~~

e. ~~b.~~ Have (i) a high school diploma or GED and (ii) at least two years of experience as an operator-in-training in

a Class ~~IV~~ 4, Class ~~III~~ 3, Class ~~II~~ 2, or Class ~~I~~ 1 waterworks or wastewater works (as appropriate); or

~~d. Have (i) a high school diploma or GED, (ii) a Class IV license, and (iii) a total of at least two years of experience as an operator or operator-in-training in a Class IV waterworks or wastewater works (as appropriate) or as an operator in training in a Class III, Class II, or Class I waterworks or wastewater works (as appropriate); or~~

e. ~~c.~~ Have (i) no high school diploma, (ii) a Class ~~IV~~ 4 license, and (iii) a total of at least four years of experience as an operator or operator-in-training in a Class ~~IV~~ 4 waterworks or wastewater works (as appropriate) or as an operator-in-training in a Class ~~III~~ 3, Class ~~II~~ 2, or Class ~~I~~ 1 waterworks or wastewater works (as appropriate).

5. Specific requirements for a Class ~~II~~ 2 license. Applicants for licensure as either a Class ~~II~~ 2 waterworks or wastewater works operator shall meet one of the following requirements and pass a the appropriate board-approved Class 2 examination:

a. Have (i) a bachelor's or master's degree with a major in engineering ~~or~~ engineering technology, or in a related physical, biological, environmental, or chemical science; and (ii) a total of at least ~~1 1/2~~ years 18 months of experience, of which at least ~~six~~ nine months without substitutions shall be as an operator-in-training in a Class ~~III~~ 3, Class ~~II~~ 2 or Class ~~I~~ 1 waterworks or wastewater works (as appropriate); or

~~b. Have (i) a bachelor's degree in engineering or engineering technology, or in physical, biological or chemical science; (ii) a Class IV license; and (iii) a total of at least 1 1/2 years of experience, of which at least six months without substitutions shall be as an operator in training in a Class III, Class II or Class I waterworks or wastewater works (as appropriate); or~~

~~e. Have (i) a bachelor's degree in engineering or engineering technology, or in physical, biological or chemical science; (ii) a Class III license; and (iii) a total of at least 1 1/2 years of experience, of which at least six months, without substitutions shall be as an operator or operator in training in a Class III waterworks or wastewater works (as appropriate) or as an operator in training in a Class II or Class I waterworks or wastewater works (as appropriate); or~~

~~d.~~ ~~b.~~ Have (i) a high school diploma or GED, (ii) a Class ~~III~~ 3 license, and (iii) a total of at least ~~four~~ three years of experience of which at least ~~two~~ years 18 months without substitutions shall be as an operator or operator-in-training in a Class ~~III~~ 3 waterworks or wastewater works (as appropriate) or as an operator-in-training in a Class ~~II~~ 2 or Class ~~I~~ 1 waterworks or wastewater works (as appropriate); or

~~e. c.~~ Have (i) no high school diploma, (ii) a Class ~~III~~ 3 license, and (iii) a total of at least ~~seven~~ six years of experience of which at least three years without substitutions shall be as an operator or operator-in-training in a Class ~~III~~ 3 waterworks or wastewater works (as appropriate) or as an operator-in-training in a Class ~~II~~ 2 or Class ~~I~~ 1 waterworks or wastewater works (as appropriate).

6. Specific requirements for a Class ~~I~~ 1 license. Applicants for licensure as either a Class ~~I~~ 1 waterworks or wastewater works operator shall meet one of the following requirements and pass a the appropriate board-approved Class 1 examination:

a. Have (i) a bachelor's or master's degree with a major in engineering or engineering technology, or in a related physical, biological, environmental, or chemical science; (ii) a Class ~~II~~ 2 license; and (iii) a total of at least 2-1/2 years of experience, of which at least ~~one year~~ 15 months without substitutions shall be as an operator or operator-in-training in a Class ~~II~~ 2 waterworks or wastewater works (as appropriate) or as an operator-in-training in a Class ~~I~~ 1 waterworks or wastewater works (as appropriate); ~~or~~

b. Have (i) a high school diploma or GED, (ii) a Class ~~II~~ 2 license and (iii) a total of at least ~~six~~ five years of experience of which at least ~~two years~~ 30 months without substitutions shall be as an operator or operator-in-training in a Class ~~II~~ 2 waterworks or wastewater works (as appropriate) or as an operator-in-training in a Class ~~I~~ 1 waterworks or wastewater works (as appropriate); or

c. Have (i) no high school diploma, (ii) a Class ~~II~~ 2 license, and (iii) a total of at least 10 years of experience of which at least ~~three~~ five years without substitutions shall be as an operator or operator-in-training in a Class ~~II~~ 2 waterworks or wastewater works (as appropriate) or as an operator-in-training in a Class ~~I~~ 1 waterworks or wastewater works (as appropriate).

C. Substitutions for required experience. For the purpose of meeting the experience requirements for Class ~~III~~ 3, Class ~~II~~ 2, and Class ~~I~~ 1 licenses, experience in the other category, relevant training in waterworks and wastewater works operation, and formal education may be substituted for actual hands-on experience in the category being applied for.

1. Category experience substitution. One half of the actual experience gained in the other category may be substituted for required experience in the category of the license being applied for.

2. Education substitution. Education may be substituted for part of the required experience in the category of the license being applied for, subject to the following limitations:

a. Education used to meet the educational requirements for any class of license may not be substituted for experience.

b. Formal education courses at a post-secondary level in a related physical, biological ~~or~~ environmental, or chemical science; engineering or engineering technology; waterworks or wastewater works operation; or public health may be substituted for part of the required experience.

(1) All education substituted for experience must be relevant to the category and classification of the license being applied for.

(2) Education may be substituted for experience at a rate of up to one month experience for each semester hour of college credit approved by the board. One quarter hour of college credit will be considered equal to two thirds of a semester hour.

(3) Substitution of formal education experience will be approved by the board only for applicants who submit a transcript from the institution where the course was taken.

c. Training substitution. Waterworks or wastewater works operator training courses, seminars, workshops, or similar training, specifically approved by the board, may be substituted for part of the required experience.

(1) All training substituted for experience must be relevant to the category and classification of the license being applied for.

(2) Training may be substituted for experience at a rate of one month experience for each training credit approved by the board. Up to one training credit is awarded for each 10 hours of classroom contact time or for each 20 hours of laboratory exercise and field trip contact time. No credit towards training credits is granted for breaks, meals, receptions, and time other than classroom, laboratory and field trip contact time.

(3) All courses used for substitution must be approved by utilizing the criteria set forth in Part VI (~~18VAC160-20-160~~) (18VAC160-20-150) of this chapter.

(4) Substitution of training for experience will be approved by the board only for applicants who submit a copy of an appropriate certificate identifying the subject matter of the course and the training credit value, and signed by a representative of the organization sponsoring the training.

3. Limitations on substitution.

a. Under no circumstances shall category experience, education, and training substitutions exceed 50% of the total experience required under ~~this~~ subsection B of this section.

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b. No category experience, education, or training substitutions are permitted for the experience required to obtain a Class ~~V~~ 6, Class ~~V~~ 5 or a Class ~~IV~~ 4 license as specified in subsection B of this section.

D. Examination. A board-approved examination shall be administered by the board or by an examination vendor approved by the board.

1. Each individual applying to sit for the examination shall satisfy the experience standards established in this section before being approved to sit for the examination. Individuals approved to sit for the examination shall be provided with written instructions for examination registration.

2. Examinees will be given specific instructions as to the conduct of the examination at the examination site. Examinees shall follow these instructions during the course of the examination. Misconduct may result in removal from the examination site, voided examination scores, the denial of the application or any combination of the foregoing.

3. Upon submission of an application for reexamination and payment of the fee established in 18VAC160-20-102, an applicant who is unsuccessful in passing the examination shall be allowed to retake the examination an unlimited number of times within one year after the date the application to sit for the examination was approved. If the one-year period elapses, then the applicant shall submit a new application to sit for the examination establishing that he meets the then-current requirements of this chapter and the fee established in 18VAC160-20-102.

4. Each application for reexamination shall be accompanied by the fee established in 18VAC160-20-102.

E. Licensure. Individuals who have passed the board-approved examination shall apply for licensure and shall satisfy the application requirements established in 18VAC160-20-76.

18VAC160-20-95. Provisional licensure – nonclassified facility operation experience only.

A. Each person desiring provisional licensure shall make application in accordance with 18VAC160-20-76 and shall meet all of the requirements of 18VAC160-20-90 except that the experience requirement may be met through experience gained as an operator of a nonclassified facility provided that:

1. The experience is obtained at a nonclassified facility that is comparable in size and in the treatment processes used to those facilities described in 18VAC160-20-120 in the case of waterworks or to those facilities described in 18VAC160-20-130 in the case of wastewater works.

2. The experience is obtained while performing actual nonclassified facility operation duties that provide

experience comparable to that obtained at a classified facility. Experience limited solely to the operation and maintenance of wastewater collection systems and water distribution systems, laboratory work, plant maintenance and other nonoperating duties shall not be counted as qualifying experience. ~~Except that experience limited to water distribution system operation and maintenance at a nonclassified facility that is comparable to a facility classified as a Class V or Class VI waterworks may be counted for a provisional Class V or Class VI license for Class 1, Class 2, Class 3, or Class 4 provisional licenses but may be counted for a provisional Class 5 or Class 6 license.~~

B. Each applicant meeting the requirements of subsection A of this section shall be eligible to sit for the operator examination for the category and class of operator license that is comparable to the nonclassified facility where the experience was obtained. The provisional license shall not be issued until all applicable requirements have been met and satisfactorily verified.

C. Each individual holding provisional licensure may apply for licensure by submitting evidence of having met 50% of the experience required by 18VAC160-20-90.

Part III Renewal

18VAC160-20-106. Renewal.

A. Licenses and provisional licenses for waterworks operators shall expire on the last day of February of each odd-numbered year. Licenses and provisional licenses for wastewater works operators shall expire on the last day of February of each even-numbered year.

B. The Department of Professional and Occupational Regulation shall mail a renewal notice to the licensee and the provisional licensee outlining the procedures for renewal. Renewal notices shall be mailed to the licensee and to the provisional licensee at the last known address of record. Failure to receive written notice shall not relieve the licensee or the provisional licensee of the obligation to renew and pay the required fee outlined in 18VAC160-20-102.

C. Each licensee and provisional licensee applying for renewal shall return the renewal notice, and fee, and, in the case of waterworks licensees and provisional licensees only, a statement that the applicant for license renewal has met the CPE requirement established in 18VAC160-20-109 prior to the expiration date shown on the license. If the licensee or provisional licensee fails to receive the renewal notice, a copy of the expired license or provisional license may be submitted in place of the renewal notice along with the required fee ~~and, in the case of waterworks licensees and provisional licensees only, a statement that the licensee or provisional licensee has met the CPE requirement in 18VAC160-20-109.~~

D. By submitting the renewal fee, an applicant for renewal is certifying continued compliance with this chapter and compliance with the continuing professional education requirements of this chapter.

E. The date on which the renewal fee and any required forms are actually received by the board or its agent shall determine whether an additional fee is due.

~~E.~~ F. If the requirements of subsection C of this section are met more than 30 days but less than 12 months after the expiration date on the license or provisional license, a late penalty fee shall be required as established in 18VAC160-20-102. The date on which the renewal application, any required documentation and the required fees are actually received by the board or its agent shall determine whether the licensee or provisional licensee is eligible for renewal and whether an additional fee is due.

~~F.~~ G. Any individual who fails to renew his license or provisional license within 12 months after the expiration date printed on the license or the provisional license, as appropriate, shall apply for a new license by examination or for a new provisional license in accordance with Part II (18VAC160-20-74 et seq.) of this chapter. Such individual shall be deemed to be eligible to sit for the examination for the same category and class of license as the expired license or provisional license.

~~G.~~ H. The board may deny renewal of a license or provisional license for the same reasons as it may refuse initial licensure or provisional licensure or discipline a licensee or provisional licensee.

18VAC160-20-109. ~~Waterworks operator~~ Operator continuing profession professional education (CPE).

~~A. Each licensed and provisionally licensed waterworks operator licensee and provisional licensee shall have completed the following number of CPE contact hours required for his class of license during each renewal cycle:~~

- ~~1. Class I 1, II 2, and III 3 waterworks and wastewater works operators shall obtain a minimum of 20 contact hours during each license renewal cycle.~~
- ~~2. Class IV 4 waterworks and wastewater works operators shall obtain a minimum of 16 contact hours during each license renewal cycle.~~
- ~~3. Class V 5 waterworks operators shall obtain a minimum of eight contact hours during each license renewal cycle.~~
- ~~4. Class VI 6 waterworks operators shall obtain a minimum of four contact hours during each license renewal cycle.~~

CPE provisions do not apply for the renewal of licenses or provisional licenses that were held for less than two years on the date of expiration.

B. The subject matter addressed during CPE contact hours shall be limited to the content areas covered by the board's examination appropriate to the license held. Safety subjects shall not count for more than one-half of the total CPE required content hours for waterworks operators and for wastewater works operators.

C. Any course approved by the board for substitution as training credits or formal education semester hours, as provided for in ~~18VAC160-20-160~~ 18VAC160-20-150, shall also be acceptable on an hour-for-hour basis for CPE contact hours. One semester hour of college credit shall equal 15 CPE contact hours, and one quarter hour of college credit shall equal 10 CPE credit hours.

D. The following evidence shall be maintained to document completion of the hours of CPE specified in subsection A of this section:

1. Evidence of completion of a structured training activity which shall consist of the name, address and telephone number of the sponsor;
2. The dates the applicant participated in the training;
3. Descriptive material of the subject matter presented; and
4. A statement from the sponsor verifying the number of hours completed.

E. Each licensee and provisional licensee shall maintain evidence of the satisfactory completion of CPE for a period of at least ~~one year~~ two years following the end of the license renewal cycle for which the CPE was taken. Such documentation shall be in the form required by subsection D of this section and shall be provided to the board or its duly authorized agents upon request.

F. The licensee or provisional licensee shall not receive CPE credit for the same training course or structured training activity more than once during a single license renewal cycle to meet the CPE requirement ~~unless the same training course or structured training activity is an annual requirement established by Virginia or federal regulations.~~

G. The licensee or provisional licensee may receive CPE credit for a training course or structured training activity which has been mandated by Virginia or federal regulation towards fulfilling the CPE requirement.

H. CPE instructors who hold a license issued by the board may receive CPE credit for the time spent actually instructing subject matter that is pertinent to their license. CPE credit shall not be allowed for instructing the same subject matter more than once during a single renewal cycle.

I. CPE instructors who hold a license issued by the board may be granted two additional hours of CPE credit for the initial development of or the substantial updating of a CPE activity that is pertinent to the license held for each hour spent delivering the initial presentation. CPE credit for the initial

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development or the substantial updating of a specific CPE activity shall be granted no more than once during a single renewal cycle.

~~H. J.~~ The licensee or provisional licensee may petition the board for additional time to meet the CPE requirement. However, CPE hours earned during a license renewal cycle to satisfy the CPE requirement of the preceding license renewal cycle shall be valid only for that preceding license renewal cycle.

Part IV Classification Requirements

18VAC160-20-120. Waterworks.

A. A Class ~~VII~~ 6 waterworks licensee may operate any waterworks as follows:

1. A waterworks providing no treatment and serving fewer than 400 persons; or
2. A waterworks classified by the Virginia Department of Health as a Class ~~VII~~ 6 waterworks.

B. A Class ~~V~~ 5 waterworks licensee may operate any waterworks as follows:

1. A waterworks serving 400 or more persons which (i) provides no treatment or (ii) employs hypochlorination for disinfection; or
2. A waterworks classified by the Virginia Department of Health as either a Class ~~V~~ 5 or Class ~~VII~~ 6 waterworks.

C. A Class ~~IV~~ 4 waterworks licensee may operate any waterworks as follows:

1. A waterworks serving fewer than 5,000 persons or having a design hydraulic capacity of less than 0.5 MGD, employing one or more of the following (i) disinfection other than with hypochlorination, (ii) corrosion control, (iii) iron and manganese removal, (iv) ion exchange, (v) membrane technology without pretreatment, (vi) slow sand filtration, (vii) aeration, (viii) rechlorination other than with hypochlorination, or (ix) activated carbon contactors; or
2. A waterworks classified by the Virginia Department of Health as ~~either a Class IV, V, or VI~~ 4, 5, or 6 waterworks.

D. A Class ~~III~~ 3 waterworks licensee may operate any waterworks as follows:

1. A waterworks serving fewer than 5,000 persons or having a design capacity less than 0.5 MGD, employing chemical coagulation or lime softening in combination with one or more of the following (i) sedimentation, (ii) rapid sand filtration with a filtration rate of 2 gpm/square foot or less, (iii) fluoridation, (iv) disinfection, (v) aeration, (vi) corrosion control, or (vii) membrane technologies;

2. A waterworks serving 5,000 or more persons or having a design hydraulic capacity of 0.5 MGD, employing one or more of the following; (i) disinfection other than with hypochlorination, (ii) corrosion control, (iii) iron and manganese removal, (iv) ion exchange, (v) membrane technology without pretreatment, (vi) slow sand filtration, (vii) aeration, (viii) rechlorination other than with hypochlorination, or (ix) activated carbon contactors;

3. A waterworks employing (i) membrane technology requiring pretreatment consisting of pH adjustment; or (ii) diatomaceous earth filtration, coupled with aeration, corrosion control, disinfection, or fluoridation;

4. A waterworks employing fluoridation which is not under a higher classification; or

5. A waterworks classified by the Virginia Department of Health as ~~either a Class III, IV, V or VI~~ 3, 4, 5, or 6 waterworks.

E. A Class ~~II~~ 2 waterworks licensee may operate any waterworks as follows:

1. A waterworks serving 5,000 or more persons but fewer than 50,000 persons or having a design hydraulic capacity of 0.5 MGD or more but less than 5.0 MGD employing chemical coagulation or lime softening in combination with one or more of the following: (i) sedimentation, (ii) rapid sand filtration, (iii) fluoridation, (iv) disinfection, (v) aeration, (vi) corrosion control, or (vii) membrane technologies;

2. A waterworks serving fewer than 50,000 persons or having a design hydraulic capacity of less than 5.0 MGD which employs chemical coagulation or lime softening coupled with multimedia granular filtration or granular filtration at rates above 2.0 gpm/square foot (high rate filtration) in combination with one or more of the following: (i) sedimentation, (ii) fluoridation, (iii) disinfection, (iv) aeration, or (v) corrosion control;

3. A waterworks employing biological activated carbon contactors or membrane technology requiring pretreatment other than pH adjustment; or

4. A waterworks classified by the Virginia Department of Health as ~~either a Class II, III, IV, V or VI~~ 2, 3, 4, 5, or 6 waterworks.

F. A Class ~~I~~ 1 waterworks licensee may operate ~~any waterworks.~~ any waterworks as follows:

1. A waterworks serving 50,000 or more persons or having a design hydraulic capacity of 5.0 MGD or more employing chemical coagulation or lime softening in combination with one or more of the following: (i) sedimentation, (ii) rapid sand filtration, (iii) fluoridation, (iv) disinfection, (v) aeration, (vi) corrosion control, or (vii) membrane technologies;

2. A waterworks serving 50,000 or more persons or having a design hydraulic capacity of 5.0 MGD or more that employs chemical coagulation or lime softening coupled with multimedia granular filtration or granular filtration at rates above 2.0 gpm/square foot (high rate filtration) in combination with one or more of the following: (i) sedimentation, (ii) fluoridation, (iii) disinfection, (iv) aeration, or (v) corrosion control;

3. A waterworks employing biological activated carbon contactors or membrane technology requiring pretreatment other than pH adjustment; or

4. A waterworks classified by the Virginia Department of Health as a Class 1, 2, 3, 4, 5, or 6 waterworks.

G. The term membrane technologies includes (i) ~~electrical dialysis~~ electrodialysis reversal, (ii) reverse osmosis, (iii) ~~ultra filtration~~ ultrafiltration, (iv) ~~micro filtration~~ microfiltration, and (v) ~~nano filtration~~ nanofiltration.

18VAC160-20-130. Wastewater works.

A. A Class ~~IV~~ 4 wastewater works licensee may operate any wastewater works as follows:

1. A wastewater works employing natural treatment methods (i.e., those not utilizing aerated or mixed flows and not using electrical or outside energy sources to accomplish treatment) with a design hydraulic capacity greater than ~~0.4~~ 0.04 MGD but equal to or less than 1.0 MGD; or

2. A wastewater works classified by the Virginia Department of Health or the Virginia Department of Environmental Quality as a Class ~~IV~~ 4 wastewater works.

B. A Class ~~III~~ 3 wastewater works licensee may operate any wastewater works as follows:

1. A wastewater works using biological treatment methods consisting of but not limited to (i) suspended growth reactors, (ii) aerated lagoons, (iii) constructed wetlands, (iv) biological filters or other attached growth contactors, (v) processes utilizing biological nutrient control, or (vi) processes utilizing land application having a design hydraulic capacity greater than 0.04 MGD, but equal to or less than 0.5 MGD;

2. A wastewater works using advanced waste treatment methods consisting of but not limited to (i) ammonia stripping, (ii) breakpoint chlorination, (iii) carbon adsorption, (iv) chemical coagulation, (v) flocculation, (vi) precipitation, (vii) filtration, or (viii) demineralization (ion exchange, reverse osmosis or electrodialysis) having a design hydraulic capacity greater than 0.04 MGD, but equal to or less than 0.5 MGD;

3. A wastewater works using combinations of biological and advanced waste treatment methods having a design

hydraulic capacity greater than 0.04 MGD, but equal to or less than 0.1 MGD;

4. A wastewater works using natural treatment methods (i.e., those not using aerated or mixed flows and not using electrical or outside energy sources to accomplish treatment) with a design hydraulic capacity greater than 1.0 MGD; or

5. A wastewater works classified by the Virginia Department of Health or the Virginia Department of Environmental Quality as either a Class ~~III or IV~~ 3 or 4 wastewater works.

C. A Class ~~II~~ 2 wastewater works licensee may operate any wastewater works as follows:

1. A wastewater works using biological treatment methods consisting of but not limited to (i) suspended growth reactors, (ii) aerated lagoons, (iii) constructed wetlands, (iv) biological filters or other attached growth contactors, (v) processes utilizing biological nutrient control, or (vi) processes utilizing land application having a design hydraulic capacity greater than 0.5 MGD, but equal to or less than 5.0 MGD;

2. A wastewater works using advanced waste treatment methods consisting of but not limited to (i) ammonia stripping, (ii) breakpoint chlorination, (iii) carbon adsorption, (iv) chemical coagulation, (v) flocculation, (vi) precipitation, (vii) filtration, or (viii) demineralization (ion exchange, reverse osmosis or electrodialysis) having a design hydraulic capacity greater than 0.5 MGD, but equal to or less than 5.0 MGD;

3. A wastewater works using combinations of biological and advanced waste treatment methods, having a design hydraulic capacity greater than 0.1 MGD, but equal to or less than 2.5 MGD; or

4. A wastewater works classified by the Virginia Department of Health or the Virginia Department of Environmental Quality as ~~either a Class II, III or IV~~ 2, 3, or 4 wastewater works.

D. A Class ~~I~~ 1 wastewater works licensee may operate any wastewater works: as follows:

1. A wastewater works using biological treatment methods consisting of, but not limited to (i) suspended growth reactors, (ii) aerated lagoons, (iii) constructed wetlands, (iv) biological filters or other attached growth contactors, (v) processes utilizing biological nutrient control, or (vi) processes utilizing land application having a design hydraulic capacity greater than 5.0 MGD;

2. A wastewater works using advanced waste treatment methods consisting of, but not limited to (i) ammonia stripping, (ii) breakpoint chlorination, (iii) carbon adsorption, (iv) chemical coagulation, (v) flocculation, (vi)

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precipitation, (vii) filtration, or (viii) demineralization (ion exchange, reverse osmosis or electro dialysis) having a design hydraulic capacity greater than 5.0 MGD;

3. A wastewater works using combinations of biological and advanced waste treatment methods, having a design hydraulic capacity greater than 2.5 MGD; or

4. A wastewater works classified by the Virginia Department of Health or the Virginia Department of Environmental Quality as a Class 1, 2, 3, or 4 wastewater works.

Part V Standards of Practice

18VAC160-20-140. Discipline.

The board has the power to discipline and fine any licensee or provisional licensee and to suspend or revoke or refuse to renew or reinstate any license or provisional license as well as the power to deny any application for a license or provisional license under the provisions of Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia and this chapter for any of the following:

1. Obtaining ~~or~~, renewing, or attempting to obtain or renew a license or provisional license through fraudulent means or misrepresentation;
2. Having been convicted or found guilty by a court in any jurisdiction of any felony or of any misdemeanor involving lying, cheating or stealing, or for activities carried out while engaged in waterworks or wastewater works activities, there being no appeal pending therefrom or the time for appeal having lapsed. Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. A certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order, decree or case decision shall be prima facie evidence of such conviction or discipline. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt;
3. Not demonstrating reasonable care, judgment, or application of the required knowledge, skill and ability in the performance of the operating duties;
4. Violating or inducing another person to violate any provisions of Chapter 1, 2, 3 or 23 of Title 54.1 of the Code of Virginia, or of any provision of this chapter;
5. Having been found guilty by the board, an administrative body or by a court of any activity in the course of performing his operating duties that resulted in the harm or the threat of harm to human health or the environment;

6. Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty, regardless of adjudication, of any felony which resulted in the harm or the threat of harm to human health or the environment. Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted of or found guilty, regardless of adjudication, of any felony or of any misdemeanor for activities carried out while engaged in waterworks or wastewater works activities or involving lying, cheating or stealing; or

7. Negligence, or a continued pattern of incompetence, in the practice as a waterworks or wastewater works operator.

Part VI Approval of Training

18VAC160-20-150. Approval of training.

A. Waterworks and wastewater works operator training for all licenses may be substituted for some of the experience required for Class ~~III~~ 3, Class ~~II~~ 2 and Class ~~I~~ 1 licenses, subject to the limitations in this section. Training courses that may be substituted for required experience must be approved by the board except those provided by federal or state agencies, institutions, schools and universities approved by the State Council of Higher Education for Virginia, for which continuing education units are awarded. Training courses requiring board approval shall be approved by the board prior to commencing in accordance with the following:

B. Training courses for which experience credit may be granted must be conducted in general conformance with the guidelines of the International Association for Continuing Education and Training (Association). The board reserves the right to waive any of the requirements of the association's guidelines on a case-by-case basis. Only classroom, laboratory and field trip contact time will be used to compute training credits. No credit will be given for breaks, meals, or receptions.

1. Organization. The board will only approve training offered by a sponsor who is an identifiable organization with a mission statement outlining its functions, structure, process and philosophy, and that has a staff of one or more persons with the authority to administer and coordinate a training credit (TC) program.
2. TC records. The board will only approve training offered by a sponsor who maintains TC records for all participants for a minimum of seven years, and who has a written policy on retention and release of TC records.
3. Instructors. The board will only approve training conducted by personnel who have demonstrated competence in the subject being taught, an understanding of the learning objective, a knowledge of the learning process to be used, and a proven ability to communicate.

4. Objectives. The board will only approve courses that have a series of stated objectives that are consistent with the job requirements of waterworks and wastewater works operators. The training course content must be consistent with those objectives.

5. Course completion requirements. For successful completion of a training course, participants must attend 90% or more of the class contact time and must demonstrate their learning through written examinations, completion of a project, ~~self-assessment~~, oral examination, or other similar assessment technique.

C. The board shall consider the following information, to be submitted by the course sponsor or instructor on forms provided by the board, at least 45 days prior to the scheduled training course:

1. Course information.
 - a. Course title;
 - b. Planned audience;
 - c. Name of sponsor;
 - d. Name, address, phone number of contact person;
 - e. Scheduled presentation dates;
 - f. Detailed course schedule, hour-by-hour;
 - g. List of planned breaks;
 - h. Scheduled presentation location; and
 - i. Relevancy of course to waterworks or wastewater works operator licensing.
2. Instructor qualifications.
 - a. Name of instructor;
 - b. Title, employer; and
 - c. Summary of qualifications to teach this course.
3. Training materials.
 - a. Course objectives. A listing of the course objectives stated in terms of the skills, knowledge, or attitude the participant will be able to demonstrate as a result of the training.
 - b. Course outline. A detailed outline showing the planned activities that will occur during the training course, including major topics, planned presentation sequence, laboratory and field activities, audio-visual presentation, and other major activities.
 - c. Course reference materials. A list of the name, publisher and publication date for commercially available publications. For reference materials developed by the course sponsor or available exclusively through the course, a copy of the reference.

d. Audio-visual support materials. A listing of any commercially available audio-visual support material that will be used in the program. A brief description of any sponsor or instructor generated audio-visual material that will be used.

e. Handouts. Identification of all commercially available handout materials that will be used; as well as copies of all other planned handouts.

4. Determination of successful completion. A description of the means that will be used to assess the learning of each participant to determine successful completion of the training program, such as examinations, projects, personal evaluations by the instructor, or other recognized evaluation techniques.

D. Recurring training programs. If there are plans to present the same course of instruction routinely at multiple locations with only minor modifications and changes, the board may approve the overall program rather than individual presentations if so requested by the sponsor.

1. The board shall consider all of the information listed above except those items related to specific offerings of the course.

2. Board approval may be granted for a specific period of time or for an indefinite period.

3. Board approval will apply only to those specific offerings certified by the sponsoring organization as having been conducted by instructors meeting the established criteria and in accordance with the board-approved course outlines and objectives.

4. To maintain approval of the program, changes made to the program since its approval must be submitted.

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TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

Final Regulation

REGISTRAR'S NOTICE: The following regulatory actions are 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 State Police will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 19VAC30-20. Motor Carrier Safety Regulations (amending 19VAC30-20-40, 19VAC30-20-60,

Regulations

19VAC30-20-80; adding 19VAC30-20-270 through 19VAC30-20-300).

Statutory Authority: § 52-8.4 of the Code of Virginia.

Effective Date: March 4, 2009.

Agency Contact: Lt. Colonel Robert Kemmler, Regulatory Coordinator, Department of State Police, Bureau of Administrative and Support Services, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-4606, FAX (804) 674-2234, or email robert.kemmler@vsp.virginia.gov.

Summary:

The amendments comply with the controlling Federal Motor Carrier Safety Regulations (49 CFR Part 390).

19VAC30-20-40. Application of regulations.

A. These regulations and those contained in 49 CFR Parts 366, 370 through 376, 379, 380 Subpart E, 382, 385, 387 and 390 through 397, unless excepted, shall be applicable to all employers, employees, and commercial motor vehicles, which transport property or passengers in interstate and intrastate commerce.

B. These regulations shall not apply to hours worked by any carrier when transporting passengers or property to or from any portion of the Commonwealth for the purpose of (i) providing relief or assistance in case of earthquake, flood, fire, famine, drought, epidemic, pestilence, major loss of utility services or other calamity or disaster or (ii) engaging in the provision or restoration of utility services when the loss of such service is unexpected, unplanned or unscheduled. The suspension of the regulation provided for in § 52-8.4 A of the Code of Virginia shall expire if the Secretary of the United States Department of Transportation determines that it is in conflict with the intent of Federal Motor Carrier Safety Regulations.

19VAC30-20-60. Inspection of records.

Any records required to be maintained by motor carriers pursuant to regulations promulgated by the Superintendent under the authority of § 52-8.4 A of the Code of Virginia, shall be open to inspection during a carrier's normal business hours by specially trained members of the Department of State Police designated for that purpose by the Superintendent shall also be authorized, with consent of the owner, operator or agent in charge or with an appropriate warrant obtained under the procedure prescribed in Chapter 24 (§ 19.2-393 et seq.) of Title 19.2 of the Code of Virginia, to go upon the property of motor carriers to verify the accuracy and compliance of maintenance such records by an and inspection of the vehicles to which those records relate.

Part III
Incorporation by Reference

Article 1
Compliance with Federal Regulations

19VAC30-20-80. Compliance.

Every person and commercial motor vehicle subject to the Motor Carrier Safety Regulations operating in interstate or intrastate commerce within or through the Commonwealth of Virginia shall comply with the Federal Motor Carrier Safety Regulations promulgated by the United States Department of Transportation, Federal Motor Carrier Safety Administration, with amendments promulgated and in effect as of January 2, ~~2007~~ 2009, pursuant to the United States Motor Carrier Safety Act found in 49 CFR Parts 366, 370 through 376, 379, 380 Subpart E, 382, 385, 387, and 390 through 397, which are incorporated in these regulations by reference, with certain exceptions, as set forth below.

Article 10

Part 370 - Principle and Practices for the Investigation and Voluntary Disposition of Loss and Damaged Claims and Processing Salvage

19VAC30-20-270. Investigation of claims - § 370.7(b).

Supporting documents. When a necessary part of an investigation, each claim shall be supported by the original bill of lading, evidence of the freight charges, if any, and either the original invoice, a photographic copy of the original invoice, or an exact copy thereof or any extract made therefrom, certified by the claimant to be true and correct with respect to the property and value involved in the claim; or certification of prices or values, with trade or other discounts, allowance, or deductions, of any nature whatsoever and the terms thereof, or depreciation reflected thereon; provided, however, that where property involved in a claim has not been invoiced to the consignee shown on the bill of lading or where an invoice does not show price or value, or where the property involved has been sold, or where the property has been transferred at bookkeeping values only, the carrier shall, before voluntarily paying a claim, require the claimant to establish the destination value in the quantity, shipped, transported, or involved; provided, further, that when supporting documents are determined to be a necessary part of an investigation, the supporting documents are retained by the carriers for possible inspection, by an authorized specially trained member of the Department of State Police designated for that purpose by the superintendent.

Article 11

Part 375 - Subpart A - General Requirements

19VAC30-20-280. What are the definitions of terms used in this part? § 375.103.

We, us, and our means authorized specially trained member of the Department of State Police designated for that purpose by the superintendent.

Article 12

Part 380 - Subpart E - Entry-Level Driver Training Requirements

19VAC30-20-290. Employer responsibilities - § 380.509(c).

All records required by this subpart shall be maintained as required by 49 CFR 390.31 and shall be made available for inspection at the employer's principal place of business within two business days after a request has been made by an authorized specially trained member of the Department of State Police designated for that purpose by the superintendent.

Article 13

Part 382 - Controlled Substances and Alcohol Use and Testing

19VAC30-20-300. Retention of records - § 382.401(d).

Location of records. All records required by this part shall be maintained as required by 49 CFR 390.31 and shall be made available for inspection at the employer's principal place of business within two business days after a request has been made by an authorized specially trained member of the Department of State Police designated for that purpose by the superintendent.

VA.R. Doc. No. R09-1753; Filed January 7, 2009, 8:01 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Proposed Regulation

Titles of Regulations: 22VAC40-110. Minimum Standards for Licensed Family Day Homes (repealing 22VAC40-110-10 through 22VAC40-110-1400).

22VAC40-111. Standards for Licensed Family Day Homes (adding 22VAC40-111-10 through 22VAC40-111-1020).

Statutory Authority: §§ 63.2-217 and 63.2-1734 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until April 3, 2009.

Agency Contact: Karen Cullen, Program Development Consultant, Department of Social Services, Division of Licensing Programs, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7152, FAX (804) 726-7132, TTY (800) 828-1120, or email karen.cullen@dss.virginia.gov.

Basis: The following sections of the Code of Virginia are the sources of legal authority to promulgate this regulation: § 63.2-217 (mandatory) states that the State Board of Social Services (board) shall adopt regulations as may be necessary or desirable to carry out the purpose of Title 63.2 of the Code of Virginia; § 63.2-1721 (mandatory) requires applicants for family day home licensure to undergo a background check; § 63.2-1734 (mandatory and discretionary) addresses the board's overall authority to promulgate regulations for licensed family day homes and specifies content areas to be included in the regulation.

Purpose: The new regulation replaces the current regulation, 22VAC40-110, Minimum Standards for Licensed Family Day Homes. The goal of the regulation is to protect the health, safety and well-being of children receiving care in licensed family day homes. The last major revision of the regulation for licensed family day homes occurred in 1993.

A periodic review of 22VAC40-110 was conducted in 1999. The periodic review resulted in a recommendation to repeal the current regulation and promulgate a new regulation to improve readability and clarity. In addition to incorporating the majority of the 1993 revisions, this new regulation adds requirements that are based on changes in law and practice.

This regulatory action has several purposes. The first purpose is to ensure that parents have sufficient information to make informed decisions about placing their children in licensed family day homes. The second purpose is to facilitate the social, emotional and intellectual development of children receiving care in licensed family day homes. The third purpose is to ensure the safety of children receiving care in licensed family day homes.

Substance: The proposed regulatory action adds requirements related to operational responsibilities of the licensee; capacity; general record keeping; children's and caregivers' records; written information for parents; proof of a child's age and identity along with a record of the child care and schools the child has attended; immunizations for children; qualifications and requirements for providers, substitute providers, and assistants; tuberculosis screening; physical or mental health evaluations for caregivers or household members; orientation for substitute providers and assistants; annual training for caregivers; medication administration training; home maintenance; hanging and drowning hazards; firearms; sharp objects; body fluids contamination; machinery; heaters; telephones; water supply; heating and cooling; electric fans; stairs; decks and porches; doors and windows; animals; smoking and prohibited substances; play equipment and materials; indoor slides and climbing

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equipment; outdoor play area and equipment; rest areas; cribs; linens; infant and toddler equipment; play pens; supervision; programs; sleeping and resting; daily activities for infants and toddlers; television, computers, videos, and video games; time out; forbidden actions; parent notifications; swimming and wading activities; exclusion of sick children; hand washing; diapering and toileting; medication; sunscreen, diaper ointment, and insect repellent; first aid supplies; emergency radios; emergency information; posted telephone numbers; emergency preparedness and response plans; evacuation, relocation, and shelter-in-place procedures; emergency response drills; reports to the department and to the health department; meals and snacks; drinking water and fluids; feeding infants; special feeding needs; transportation, drivers, and vehicles; and nighttime care.

Issues: The primary advantage of the proposed regulatory action is the increased protection it provides to children receiving care in licensed family day homes. The proposed regulatory action strengthens the standards to provide much needed improvements for the care and services; for qualifications, training, and responsibilities of staff who provide the care and services; for management of the operation of the home; and for the building and grounds where care is provided.

When requirements are strengthened, there must be a balance between the benefit and associated costs. In the proposed regulatory action, a fair and reasonable balance has been achieved.

The advantage to the Commonwealth is that the proposed regulatory action reflects the importance that Virginia places on ensuring adequate child care for children of working parents. There are no known disadvantages to the Commonwealth.

It is possible that family day homes will pass along some of the increased costs to parents.

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

Summary of the Proposed Amendments to Regulation. The State Board of Social Services proposes to incorporate and replace Minimum Standards for Licensed Family Day Homes (22 VAC 40-110) with new regulations, Standards for Licensed Family Day Homes (22 VAC 40-111). The main goal of the changes is to improve health and safety of children while under the care of a licensed family day home. The proposed new requirements are related to following areas: staff qualifications, training, and responsibilities; physical plant features; care and services for children; and emergency preparedness.

Result of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs.

Estimated Economic Impact. The State Board of Social Services proposes to incorporate and replace Minimum Standards for Licensed Family Day Homes (22 VAC 40-110) with new regulations, Standards for Licensed Family Day Homes (22VAC40-111). The main goal of the changes is to improve health and safety of children while under the care of a licensed family day home.

In general, most of the proposed changes are aimed at clarifying the intent of the regulations to improve compliance with the standards and procedures and thus to improve health and safety of children at licensed day homes. However, several proposed changes will create generally small, but non-negligible costs for compliance.

One of the proposed changes will increase annual training from 6 hours to 16 hours over a four year time frame. When the regulation becomes effective, the annual raining hours will increase to 8 hours, one year after the effective date the annual raining hours will increase to 12 hours, two years after the effective date the annual raining hours will increase to 14 hours, and three years after the effective date the annual raining hours will increase to 16 hours. DSS estimates that the cost of providing additional two hours of training when the regulations become effective is \$26, the cost of providing additional six hours of training one year after the regulations become effective is \$68, the cost of providing additional eight hours of training two years after the regulations become effective is \$84, the cost of providing additional ten hours of training three years after the regulations become effective is \$110.

Also, pursuant to § 54.1-3408 N of the Code of Virginia, proposed regulations requires medication administration training for caregivers who choose to administer prescription medications. The cost of medication administration training is estimated to be \$50.

Another proposed change will remove the exemption to have a CPR certification from providers who are registered nurses or licensed practical nurses as they may not have had this training. Also, the CPR certification and First Aid Certification will be required from assistants. According to the DSS, the cost of CPR certification is \$28 the cost of First Aid Certification is \$35.

Also, basic water rescue certification will be required if needed when children are in water over two feet deep. This certification is estimated to cost \$30.

The proposed regulations will require that the providers provide orientation to assistants and substitute providers within one week of the employment. The orientation will cover job related responsibilities and obligations. DSS estimates the cost of the orientation to be \$8.

Also, providers will be required to develop an emergency preparedness and response plan. Estimated cost of the plan is \$40.

The proposed regulations will also require a fence or barrier around play areas that are in close proximity to hazards such as pools, ponds, railroad tracks. The estimated cost of the fence or barrier is \$1,000.

In addition, several other proposed changes will establish requirements that may introduce additional costs. These include that the provider have 1) a land-line phone (the phone is estimated to cost \$20 and the monthly service is estimated to cost \$30), 2) safety locks on each closet and bathroom door (estimated to cost \$8), 3) a set of bed linens for each child (estimated to cost \$15), 4) activated charcoal preparation for first aid kit (estimated to cost \$20), 5) weather band radio and extra batteries (estimated to cost \$15), 6) baby monitor if night time care is provided (estimated to cost \$15).

While each of the proposed changes mentioned above is expected to create some additional costs, the significance of the overall impact will depend on the current compliance levels. For example, if a provider already has a land line phone, he or she will not face additional costs as she or he has been already incurring all of the costs of having a landline phone. Since the level of current compliance is not known, an accurate estimate of the total potential costs cannot be provided.

Businesses and Entities Affected. The proposed regulations apply to licensed family day homes. Currently, there are 1,768 licensed day homes in Virginia caring for approximately 19,467 children.

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

Projected Impact on Employment. The proposed regulations are expected to affect demand for labor in two directions. Increased training, certification, and physical plant requirements may add to demand for labor. On the other hand, any increase caused by increase in child care prices may reduce demand for labor by reducing the demand for child care. Thus, the net effect on employment is uncertain.

Effects on the Use and Value of Private Property. The proposed changes could also affect the value of family day home businesses through the effects on future profit streams. Most changes will increase compliance costs. Therefore, the value of family day home businesses would decrease on average. On the other hand, costs of litigation and liability insurance might be lower if the family day home industry is operating under better health and safety standards which could balance out the potential decrease in value to some extent. Furthermore, some physical plant requirements such as fencing or safety locks may affect the value of provider homes in either direction.

Small Businesses: Costs and Other Effects. All licensed family day homes are estimated to be small businesses. Thus, all of the costs and benefits discussed above apply to small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no known alternative that minimizes adverse impact while improving health and safety of children.

Real Estate Development Costs. The proposed regulations are not anticipated to have any effect on 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 Social Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

CHAPTER 111

STANDARDS FOR LICENSED FAMILY DAY HOMES

22VAC40-111-10. Definitions.

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

"Accessible" means capable of being entered, reached, or used.

"Adult" means any individual 18 years of age or older.

"Age-appropriate" means suitable to the chronological age and individual needs of a child.

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"Assistant" means an individual who helps the provider or substitute provider in the care, protection, supervision and guidance to children in the home.

"Body fluids" means urine, feces, vomit, blood, saliva, nasal discharge, and tissue discharge.

"Caregiver" means an individual who provides care, protection, supervision and guidance to children in the home and includes the provider, substitute provider and assistant.

"Child" means an individual under 18 years of age.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

"Child with special needs" means a child with developmental disabilities, mental retardation, emotional disturbance, sensory or motor impairment, or significant chronic illness who requires special health surveillance or specialized programs, interventions, technologies, or facilities.

"Cleaned" means treated in such a way as to remove dirt and debris by scrubbing and washing with soap and water or detergent solution and rinsing with water.

"Commissioner" means the Commissioner of the Virginia Department of Social Services.

"Department" means the Virginia Department of Social Services.

"Department's representative" means an employee or designee of the Virginia Department of Social Services, acting as the authorized agent of the commissioner.

"Evacuation" means movement of occupants out of the building to a safe area near the building.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation.

"Good character and reputation" means knowledgeable and objective people agree that the individual (i) maintains business, professional, family, and community relationships that are characterized by honesty, fairness, and truthfulness; and (ii) demonstrates a concern for the well-being of others to the extent that the individual is considered suitable to be entrusted with the care, guidance, and protection of children. Relatives by blood or marriage, and people who are not knowledgeable of the individual, such as recent acquaintances, shall not be considered objective references.

"High school program completion or the equivalent" means an individual has earned a high school diploma or General Education Development (G.E.D.) certificate, or has completed a program of home instruction equivalent to high school completion.

"Inaccessible" means not capable of being entered, reached, or used.

"Infant" means a child from birth up to 16 months of age.

"Nighttime care" means care provided between 7 p.m. and 6 a.m.

"Parent" means the biological, foster or adoptive parent, legal guardian, or any individual with responsibility for, or custody of a child enrolled in or in the process of being enrolled in a family day home.

"Physician" means an individual licensed to practice medicine in any of the 50 states or the District of Columbia.

"Preschool" means children from two years up to the age of eligibility to attend public school, age five by September 30 of that same year.

"Programmatic experience" means time spent working directly with children in a group that is located away from the child's home. Work time shall be computed on the basis of full-time work experience during the period prescribed or equivalent work time over a longer period. Experience settings may include, but not be limited to, a child day program, family day home, child day center, boys and girls club, field placement, elementary school, or a faith-based organization.

"Provider" means an individual who is issued the family day home license by the Department of Social Services and who has primary responsibility in providing care, protection, supervision, and guidance of children in the family home.

"Relocation" means movement of occupants of the building to a safe location away from the vicinity of the building.

"Residence" means principal legal dwelling or abode that is occupied for living purposes by the provider and contains the facilities necessary for sleeping, eating, cooking, and family living.

"Sanitized" means treated in such a way as to remove bacteria and viruses from inanimate surfaces through first cleaning and secondly using a disinfectant solution (i.e., bleach solution or commercial chemical disinfectant) or physical agent (e.g., heat). The surface of the item is sprayed or dipped into the disinfectant solution and then allowed to air dry.

"School age" means eligible to attend public school, age five or older by September 30 of that same year.

"Serious injury" means a wound or other specific damage to the body such as, but not limited to, unconsciousness; broken

bones; dislocation; deep cut requiring stitches; poisoning; concussion; and a foreign object lodged in eye, nose, ear, or other body orifice.

"Shelter-in-place" means movement of occupants of the building to designated protected spaces within the building.

"Substitute provider" means an individual who meets the qualifications of a provider; is designated by the provider; and who provides care, protection, supervision and guidance for children in the family day home when the provider is absent from the home for more than two hours.

"Time out" means a discipline technique in which a child is moved for a brief time away from the stimulation and reinforcement of ongoing activities and other children in the group to allow the child who is losing self-control to regain composure.

"Toddler" means a child from 16 months of age up to 24 months of age.

22VAC40-111-20. (Reserved.)

22VAC40-111-30. Operational responsibilities.

A. The provider shall ensure compliance with these standards and the terms of the current license issued by the department and with relevant federal, state or local laws, and other relevant regulations.

B. The provider will ensure compliance with the home's policies that have been disclosed to the parents as required by 22VAC-40-111-70.

C. The provider shall give evidence of financial responsibility.

D. The provider shall be of good character and reputation. Character and reputation investigation includes, but is not limited to, background checks as required by §§ 63.2-1702 and 63.2-1721 of the Code of Virginia.

E. The provider shall meet the requirements specified in 22VAC40-191, Background Checks for Child Welfare Agencies.

F. The provider shall ensure that the home's activities, services, and facilities are conducive to the welfare of children in care.

G. The provider shall be responsible for the home's day-to-day operation.

H. The provider shall ensure that any advertising is not misleading or deceptive as required by § 63.2-1713 of the Code of Virginia.

I. The provider shall meet the requirements specified in 22VAC40-80, General Procedures and Information for Licensure.

22VAC40-111-40. Capacity.

A. The provider shall ensure that the total number of children receiving care at any one time does not exceed the maximum licensed capacity of the home.

B. When at least one child receives care for compensation, all children, exclusive of the provider's own children and children who reside in the home, who are in the care and supervision of a provider, count in the licensed capacity.

C. The department may restrict the number and ages of children who may be in care at one time in a family day home to less than the maximum group size of 12 children, if the department determines that the maximum is unsuitable for that home based on the following factors:

1. The provider's responsibility to supervise children 13 years of age or older who are not the provider's own children or who do not reside in the home;

2. The availability of adequate space to allow each child free movement and active play indoors and outdoors as required by 22VAC40-111-380;

3. The provider's responsibility to care for another individual who may require special attention or care, including but not limited to an elderly resident or a child with a serious physical, emotional, or behavioral condition; or

4. The issuance of a special order to limit capacity pursuant to § 63.2-1709.2 of the Code of Virginia.

22VAC40-111-50. General record keeping.

A. The family day home shall keep a written record of children in attendance each day.

B. The provider's records shall be maintained in the home and made accessible to the department's representative.

C. Information contained in a child's record shall be privileged and confidential. The provider shall not distribute or release information in a child's record to any unauthorized person without the written consent of the child's parent.

D. Children's records shall be made available to a child's parent upon request, unless otherwise ordered by the court.

E. Records and reports on children, caregivers, and household members required by this chapter shall be maintained and made accessible to the department's representative for two years from the date of termination of services for a child, date of separation from employment for caregivers, or date of termination of residence for a household member, or unless specified otherwise.

22VAC40-111-60. Children's records.

A. The provider shall maintain an up-to-date record at the family day home for each enrolled child.

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B. A child's record shall contain the following information:

1. Child's full name, nickname (if any), sex, address, and birth date;
2. Emergency contact information including:
 - a. Name, home address, and telephone number of each parent who has custody;
 - b. Name, address and telephone number of each custodial parent's place of employment;
 - c. Name, office address and telephone number of the child's physician;
 - d. Name, address and telephone number of two designated persons to contact in case of an emergency if the parent cannot be reached;
 - e. Information on allergies and intolerance to food, medication, or any other substances, and actions to take in an emergency situation;
 - f. Name and policy number of the child's medical insurance, if applicable;
 - g. Names of persons other than the custodial parents who are authorized to pick up the child;
 - h. Appropriate legal paperwork when a custodial parent does not authorize the provider to release the child to the other parent; and
 - i. Chronic physical problems, pertinent developmental information, and any special accommodations needed;
3. First and last dates of attendance;
4. Parent's signed acknowledgement of the receipt of the information required by 22VAC40-111-70;
5. Proof of the child's age and identity and the names and addresses of previously attended child day care and schools as required by 22VAC40-111-80;
6. Immunization records for the child as required by 22VAC40-111-90;
7. Results of the health examination for the child as required by 22VAC40-111-100;
8. Written authorization for emergency medical care should an emergency occur and the parent cannot be located immediately unless the parent presents a written objection to provision of medical treatment on religious or other grounds;
9. Written authorization if a caregiver is to administer prescription or nonprescription medication to the child as required by 22VAC40-111-700 A 2;
10. Written authorization if the child is to participate in swimming or wading activities as required by 22VAC40-111-660 B;

11. Written authorization if the child is taken off the premises of the family day home as required by 22VAC40-111-980;

12. Special instructions to the provider including, but not limited to, exception to an infant's sleeping position as required in 22VAC40-111-590 A, recommendations for the care and activities of a child with special needs as required in 22VAC40-111-620 A, and exception to an infant's being fed on demand as required in 22VAC40-111-960 A;

13. Record of any accidents or injuries sustained by the child while at the family day home as required by 22VAC40-111-840; and

14. Documentation of the review of the child's emergency contact information as required by 22VAC40-111-780 B.

22VAC40-111-70. Written information for parents.

A. Before the child's first day of attendance, parents shall be provided in writing the following information:

1. Operating information including the hours and days of operation, holidays or other times closed, and the telephone number where a message can be left for a caregiver;

2. Schedule of fees and payment plans;

3. Check in and check out procedures;

4. Policies for the administration of medications;

5. Whether or not there is liability insurance of at least \$100,000 per occurrence and \$300,000 aggregate in force on the family day home operation as required by § 63.2-1809.1 of the Code of Virginia;

6. Requirement for the family day home to notify the parent when the child becomes ill and for the parent to arrange to have the child picked up as soon as possible if so requested by the home;

7. Requirement for the parent to inform the family day home within 24 hours or the next business day after his child or any member of the immediate household has developed any reportable communicable disease, as defined by the State Board of Health, except for life-threatening diseases, which must be reported immediately;

8. Requirement for the child to be age-appropriately immunized;

9. Requirement for paid caregivers to report suspected child abuse or neglect according to § 63.2-1509 of the Code of Virginia;

10. Custodial parent's right to be admitted to the family day home any time the child is in care as required by § 63.2-1813 of the Code of Virginia;

11. General daily schedule that is appropriate for the age of the enrolling child;

12. Policies for the provision of food;

13. Presence of a pet or animal in the home;

14. Discipline policies including acceptable and unacceptable discipline measures;

15. Amount of time per week that an adult assistant or substitute provider instead of the provider is scheduled to care for the child and the name of the adult assistant or substitute provider;

16. Provisions of the family day home's emergency preparedness and response plan;

17. Parental notifications required in 22VAC40-111-650;

18. Policies for termination of care; and

19. Address of the website of the department, with a note that a copy of this regulation and additional information about the family day home may be obtained from the website, including compliance history that includes information after July 1, 2003.

B. The provider shall obtain the parent's written acknowledgement of the receipt of the information in this section.

22VAC40-111-80. Proof of age and identity; record of child care and schools.

A. Within seven business days of the child's first day of attendance at the family day home, the provider shall obtain from the parent:

1. Verification of the identity and age of the child; and

2. Name and location of previous day care programs and schools the child has attended.

B. The provider shall verify the identity and age of a child by viewing one of the following:

1. Certified birth certificate;

2. Birth registration card;

3. Notification of birth, i.e., hospital, physician, or midwife record;

4. Passport;

5. Copy of the placement agreement or other proof of the child's identity from a child placing agency;

6. Original or copy of a record or report card from a public school in Virginia; or

7. Signed statement on letterhead stationery from a public school principal or other designated official that assures the child is or was enrolled in the school.

C. The provider shall document in the child's record:

1. The method of verification of the child's age and identity; and

2. The names and locations of the previous child care programs and schools the child has attended.

D. The provider shall notify the local law-enforcement agency if the parent does not provide the information required in 22VAC40-111-80 A within seven business days of the child's first day of attendance at the family day home.

E. The proof of identity, if reproduced or retained by the family day home, shall be destroyed two years after termination of services to the child. The procedures for the disposal, physical destruction or other disposition of the proof of identity containing social security numbers shall include all reasonable steps to destroy such documents by:

1. Shredding;

2. Erasing; or

3. Otherwise modifying the social security numbers in those records to make them unreadable or indecipherable by any means.

22VAC40-111-90. Immunizations for children.

A. Before a child may attend the family day home, the provider shall obtain documentation that the child has been adequately immunized according to State Board of Health regulations.

B. A child whose immunizations are incomplete may attend the family day home if the provider obtains documentation signed by a licensed physician, the physician's designee, or an official of a local health department that:

1. The child has received at least one dose of the required immunizations; and

2. There is a schedule for completion of the required immunizations within 90 days of the child's first day of attendance at the family day home.

C. At the end of 90 days from the child's first day of attendance at the family day home, the provider shall not allow the child to attend the family day home unless the provider obtains documentation signed by a licensed physician, the physician's designee, or an official of a local health department that:

1. The child's immunization schedule has been completed; or

2. A medical contraindication developed during the 90-day completion schedule.

D. Pursuant to subsection C of § 22.1-271.2 of the Code of Virginia, documentation of immunizations is not required for any child whose:

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1. Parent submits an affidavit to the family day home on the current form approved by the Virginia Department of Health stating that the administration of immunizing agents conflicts with the parent's or child's religious tenets or practices; or

2. Physician or a local health department states on a Department of Health-approved form that one or more of the required immunizations may be detrimental to the child's health, indicating the specific nature and probable duration of the medical condition or circumstance that contraindicates immunization.

E. The family day home shall obtain documentation of additional immunizations for a child who is not exempt from the immunization requirements according to subsection D of this section:

1. Once every six months for children under the age of two years; and

2. Once between each child's fourth and sixth birthdays.

22VAC40-111-100. Physical examinations for children.

A. The provider shall obtain documentation of a physical examination by or under the direction of a physician prior to a child's attendance or within 30 days after the first day of attendance.

B. The physical examination prior to attendance shall have been conducted:

1. Within two months prior to attendance for children six months of age or younger;

2. Within three months prior to attendance for children age seven months through 18 months;

3. Within six months prior to attendance for children age 19 months through 24 months; or

4. Within 12 months prior to attendance for children two years of age through five years of age.

C. EXCEPTIONS:

1. A new physical examination is not required if a copy of the physical examination is available to the admitting family day home for a child transferring from a facility licensed by the Virginia Department of Social Services, approved by a licensed family day system, voluntarily registered by the Virginia Department of Social Services or by a contract agency of the Virginia Department of Social Services, or transferring from a Virginia Department of Education-approved child care program;

2. Pursuant to subsection D of § 22.1-270 of the Code of Virginia, physical examinations are not required for any child whose parent objects on religious grounds. The parent must submit a signed statement noting that the parent objects on religious grounds and certifying that to

the best of the parent's knowledge the child is in good health and free from communicable or contagious disease.

22VAC40-111-110. Form and content of immunization and physical examination reports for children.

A. The current form approved by the Virginia Department of Health or a physician's form shall be used to record immunizations received and the results of the required physical examination.

B. Each report shall include the date of the physical examination and dates immunizations were received and shall be signed by a licensed physician, the physician's designee, or an official of a local health department.

22VAC40-111-120. Caregiver records.

A. The provider shall maintain a record for each caregiver.

B. Caregivers' records shall contain the following:

1. Name;

2. Address;

3. Verification of age;

4. Job title;

5. Date of employment or volunteering;

6. Name address and telephone number of a person to be notified in an emergency;

7. For caregivers hired after [insert effective date of this regulation], documentation that two or more references as to character and reputation as well as competency were checked before employment. If a reference check is taken over the telephone, documentation shall include:

a. Dates of contact,

b. Names of persons contacted,

c. Firms contacted,

d. Results, and

e. Signature of person making call;

8. Background checks as required by 22VAC40-111-130;

9. Documentation of the time of arrivals and departures for substitute providers as required by 22VAC40-111-140 D;

10. Documentation of tuberculosis screening as required by 22VAC40-111-170 and 22VAC40-111-180 A; and

11. Documentation of the education and training as required by 22VAC40-111-230.

22VAC40-111-130. General qualifications for caregivers.

Caregivers shall:

1. Be of good character and reputation;

2. Be physically and mentally capable of carrying out assigned responsibilities;

3. Be courteous, respectful, patient, and affectionate toward the children in care;

4. Be able to speak, read, and write in English as necessary to:

a. Carry out assigned job responsibilities, and

b. Communicate effectively with emergency responders; and

5. Meet the requirements specified in 22VAC40-191, Background Checks for Child Welfare Agencies.

22VAC40-111-140. Qualifications and requirements for providers and substitute providers.

A. Providers and substitute providers shall be 18 years of age or older.

B. Providers licensed after and substitute providers employed after [insert effective date of this regulation] shall have:

1. (i) A high school program completion or the equivalent or (ii) evidence of having met the requirements for admission to an accredited college or university;

2. Three months of programmatic experience;

3. Current certification in cardiopulmonary resuscitation (CPR), as appropriate to the age of the children in care, from the American Red Cross, American Heart Association, American Safety and Health Institute, the National Safety Council, or other designated program approved by the department; and

4. Current certification in first aid from the American Red Cross, American Heart Association, American Safety and Health Institute, the National Safety Council, or other designated program approved by the department.

EXCEPTION: A provider or substitute provider who is a registered nurse or licensed practical nurse with a current license from the Board of Nursing shall not be required to obtain first aid certification.

C. Use of a substitute provider shall be limited to no more than a total of 240 hours per calendar year.

D. A substitute provider shall record and sign the time of arrivals and departures on each day that the substitute provider works.

22VAC40-111-150. Qualifications and requirements for assistants.

A. Assistants shall:

1. Be 16 years of age or older;

2. Have current certification in cardiopulmonary resuscitation (CPR), as appropriate to the age of the children in care, from the American Red Cross, American Heart Association, American Safety and Health Institute, National Safety Council, or other designated program approved by the department; and

3. Have current certification in first aid from the American Red Cross, American Heart Association, American Safety and Health Institute, National Safety Council, or other designated program approved by the department.

EXCEPTION: An assistant who is a registered nurse or licensed practical nurse with a current license from the Board of Nursing shall not be required to obtain first aid certification.

B. An assistant under the age of 18 years of age shall always work under the direct supervision of the provider or substitute provider. Direct supervision means being able to hear or see the assistant and children at all times.

C. An assistant 18 years of age or older shall not be left alone with children in care for more than two hours per day.

D. An assistant 18 years of age or older who meets the requirements for a substitute provider may act as the substitute provider when the provider is absent from the home for more than two hours.

22VAC40-111-160. Attributes for household members.

Members of the family day household 14 years of age and older, including relatives and lodgers shall:

1. Display behavior that demonstrates emotional stability,

2. Be of good character and reputation, and

3. Meet the requirements specified in 22VAC40-191, Background Checks for Child Welfare Agencies.

22VAC40-111-170. Initial tuberculosis screening for caregivers and household members.

A. The provider shall obtain from each caregiver at the time of hire and each adult household member prior to coming into contact with children a current Report of Tuberculosis Screening form published by the Virginia Department of Health or a form consistent with it documenting the absence of tuberculosis in a communicable form.

B. The form shall have been completed within the last 30 days and be signed by a physician, physicians' designee, or an official of the local health department.

22VAC40-111-180. Subsequent tuberculosis screening for caregivers and household members.

A. The provider shall obtain for each caregiver and adult household member a current Report of Tuberculosis Screening form, in accordance with the requirements in

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22VAC40-111-170, every two years from the date of the first screening or more frequently as recommended by a physician or the local health department.

B. Within 30 days of a caregiver's or adult household member's coming into contact with a known case of infectious tuberculosis, the provider shall obtain for the individual a new Report of Tuberculosis Screening form in accordance with the requirements in 22VAC40-111-170. Until a new screening form is issued that documents the absence of tuberculosis in a communicable form, the caregiver or adult household member shall not have contact with children.

C. The provider shall immediately obtain a new Report of Tuberculosis Screening form in accordance with the requirements in 22VAC40-111-170 for any caregiver or adult household member who develops chronic respiratory symptoms of three weeks duration. Until a new screening form is issued that documents the absence of tuberculosis in a communicable form, the caregiver or adult household member shall not have contact with children.

22VAC40-111-190. Physical and mental health examinations for caregivers and household members.

A. The provider or the department's representative may require a report of examination by a licensed physician or mental health professional when there are indications that a caregiver's or household member's physical or mental health may endanger the health, safety, or well-being of children in care.

B. A caregiver or household member who is determined by a licensed physician or mental health professional to show an indication of a physical or mental condition that may endanger the health, safety, or well-being of children in care or that would prevent the performance of duties shall be removed immediately from contact with children and food served to children until the condition is cleared as evidenced by a signed statement from the physician or mental health professional.

22VAC40-111-200. Orientation.

A. The provider shall orient the substitute provider and assistant by the end of their first week of assuming job responsibilities.

B. The orientation shall cover the following topics:

1. Job responsibilities;
2. Requirements for parental notifications listed in 22VAC40-111-650;
3. Standards in this chapter that relate to the substitute provider's or assistant's responsibilities;
4. Emergency evacuation, relocation, and shelter-in-place procedures;

5. Location of emergency numbers, first aid kit, and emergency supplies;

6. Confidential treatment of information about children in care and their families; and

7. Requirement for reporting suspected child abuse and neglect.

C. Documentation of the orientation shall be signed and dated by the provider and substitute provider or by the provider and assistant.

22VAC40-111-210. Annual training.

A. In addition to satisfactory completion of first aid training and CPR training, caregivers shall obtain a minimum of eight clock hours of training annually in areas relevant to their job responsibilities.

1. One year after [insert the effective date of this regulation], caregivers shall obtain 12 clock hours of training annually.

2. Two years after [insert the effective date of this regulation], caregivers shall obtain 14 clock hours of training annually.

3. Three years after [insert the effective date of this regulation], caregivers shall obtain 16 clock hours of training annually.

B. The annual training shall cover areas such as, but not limited to:

1. Physical, intellectual, social, and emotional child development;

2. Behavior management and discipline techniques;

3. Health and safety in the family day home environment;

4. Art and music activities for children;

5. Child nutrition;

6. Recognition and prevention of child abuse and neglect;
or

7. Recognition and prevention of the spread of communicable diseases.

22VAC40-111-220. Medication administration training.

A. To safely perform medication administration practices listed in 22VAC40-111-710 whenever the family day home has agreed to administer prescription medications, the administration shall be performed by a caregiver who:

1. Has satisfactorily completed a training program for this purpose developed or approved by the Board of Nursing and taught by a registered nurse, licensed practical nurse, doctor of medicine or osteopathic medicine, or pharmacist;
or

2. Is licensed by the Commonwealth of Virginia to administer medications.

B. Caregivers required to have the training in subdivision A 1 of this section shall be retrained at three-year intervals.

C. To safely perform medication administration practices listed in 22VAC40-111-720 whenever the family day home has agreed to administer nonprescription medications, the administration must shall be performed by a caregiver who:

1. Has satisfactorily completed a training program for this purpose developed by the Department of Social Services, or

2. Is licensed by the Commonwealth of Virginia to administer medications.

D. Caregivers required to have the training specified in subdivision C 1 of this section shall be retrained at three-year intervals.

22VAC40-111-230. Documentation of education and training.

A. The provider shall maintain written documentation of each caregiver's applicable education and programmatic experience, first aid certification, CPR certification, orientation, annual training, and applicable medication administration training.

B. Written documentation of annual training shall include:

1. Name of the caregiver,

2. Name of the training session,

3. Date and total hours of the session, and

4. Name of the organization that sponsored the training and the trainer.

22VAC40-111-240. Home maintenance.

A. Areas and furnishings of the family day home, inside and outside, shall be maintained in a clean, safe, and operable condition. Unsafe conditions shall include, but not be limited to, splintered, cracked or otherwise deteriorating wood; chipped or peeling paint; visible cracks, bending or warping, rusting or breakage of any equipment; head entrapment hazards; and protruding nails, bolts, or other components that could entangle or could snag skin.

B. No equipment, materials, or furnishings shall be used if recalled or identified by the U.S. Consumer Product Safety Commission as being hazardous.

22VAC40-111-250. Hanging and strangulation hazards.

A. Hanging items including, but not limited to, window blind or curtain cords, appliance cords, and tablecloths shall be out of reach of children under five years of age.

B. Children shall be protected from materials that could be swallowed or present a choking hazard. Toys or objects less than 1-1/4 inches in diameter and less than two inches in length shall be kept out of reach of children under the age of three years.

C. Items tied across the top or corner of a crib or playpen or toys hung from the sides with strings or cords shall be removed when the child begins to push up on hands and knees or is five months of age, whichever occurs first.

D. Hood or neck drawstrings shall be removed from a child's clothing prior to a child's using climbing play equipment.

22VAC40-111-260. Drowning hazards.

A. Access to the water in aboveground swimming pools shall be prevented by locking and securing the ladder in place or storing the ladder in a place inaccessible to children.

B. A nonclimbable barrier at least four feet high such as, but not limited to, a fence or impenetrable hedge shall surround outdoor play areas located within 30 feet of drowning hazards such as, but not limited to, inground swimming or wading pools, ponds, or fountains not enclosed by safety fences. Facilities licensed prior to [insert the effective date of this regulation] must comply fully with the requirement of this subsection within one year of [insert the effective date of this regulation].

C. Portable wading pools without integral filter systems shall:

1. Be emptied after use by each group of children, rinsed, and filled with clean water, or more frequently as necessary; and

2. When not in use during the family day home's hours of operation, be emptied, sanitized, and stored in a position to keep them clean and dry.

D. Portable wading pools shall not be used by children who are not potty trained.

E. Bathtubs, buckets, and other containers of liquid accessible to children shall be emptied immediately after use.

F. Hot tubs, spas, and whirlpools shall:

1. Not be used by children in care, and

2. Covered with safety covers while children are in care.

22VAC40-111-270. Firearms and ammunition.

A. Firearms of every type and purpose shall be stored unloaded in a locked container, compartment or cabinet, and apart from ammunition.

B. Ammunition shall be stored in a locked container, compartment or cabinet during the family day home's hours of operation.

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C. If a key is used to lock the container, compartment or cabinet, the key shall be inaccessible to children.

22VAC40-111-280. Poisonous materials.

Potentially poisonous substances, materials and supplies such as, but not limited to, cleaning agents, disinfectants, deodorizers, plant care chemicals, pesticides, and petroleum distillates shall be stored away from food in areas inaccessible to children.

22VAC40-111-290. Sharp objects.

Sharp kitchen utensils and other sharp objects shall be inaccessible to children unless being used by the caregiver or with children under close supervision.

22VAC40-111-300. Body fluids contamination.

When any surface has been contaminated with body fluids, it shall be cleaned and sanitized.

22VAC40-111-310. Machinery.

Machinery such as lawnmowers and power tools shall be inaccessible to the children in care.

22VAC40-111-320. Fire safety and shock prevention.

A. Small electrical appliances such as, but not limited to, curling irons, toasters, blenders, can openers, and irons shall be unplugged and placed in an area inaccessible to children unless being used by the caregiver or with children under close supervision.

B. Child-resistant protective covers larger than 1-1/4 inches in diameter shall be installed on all unused electrical outlets accessible to children.

C. No electrical device accessible to children shall be placed so that it could be plugged into an electrical outlet while in contact with a water source, such as a sink, tub, shower area, toilet, or swimming or wading pool.

D. Electrical cords and electrical appliances and equipment with cords that are frayed and have exposed wires shall not be used.

E. Radiators, oil and wood burning stoves, floor furnaces, fireplaces, portable electric heaters, and similar heating devices located in areas accessible to children shall have barriers or screens and be located at least three feet from combustible materials.

F. Unvented fuel burning heaters shall not be used when children are in care. Unvented fuel burning heaters include, but are not limited to, portable oil-burning (kerosene) heaters; portable, unvented liquid or gas fueled heaters; and unvented fireplaces.

G. Wood burning stoves and fireplaces and associated chimneys shall be inspected annually by a knowledgeable inspector to verify that the devices are properly installed,

maintained, and cleaned as needed. Documentation of the inspection and cleaning shall be maintained by the provider.

H. All flammable and combustible materials such as, but not limited to, matches, lighters, lighter fluid, kerosene, turpentine, oil and grease products, aerosol cans and alcohol shall be stored in an area inaccessible to children.

I. If there are open and obvious fire hazards, including the absence of fire extinguishers or smoke detectors as required by the Uniform Statewide Building Code and the Statewide Fire Prevention Code, the local fire prevention or building officials, or the State Fire Marshal's office shall be contacted by the department's representative. The provider shall comply with the requirements or recommendations made by the fire prevention or building officials to eliminate fire hazards.

22VAC40-111-330. Telephones.

A. A landline telephone, excluding a cordless or cell phone, shall be available, operable, and accessible during the family day home's hours of operation. An operable landline telephone is one that does not require electricity to operate. Cordless or cell phones may be used in addition to the landline telephone.

B. If the telephone number is unlisted, the provider shall ensure that parents and the department have been given the unlisted number in writing.

C. The provider shall inform the department within 48 hours and parents within 24 hours of a change of the telephone number.

22VAC40-111-340. Bathrooms.

A. The home shall have an indoor bathroom.

B. The bathroom shall be easily accessible to children two years of age and older.

C. The bathroom shall be kept clean and contain a working toilet and sink, toilet tissue, liquid soap, and paper towels.

22VAC40-111-350. Water supply.

A. The home shall have indoor running water.

B. When water is not obtained from a municipal supply, and the house is not connected to a municipal sewer line, the water supply and septic system of the family day home shall be inspected and approved by the local health official or a private laboratory if there are open and obvious symptoms of water or sewage system problems, such as evidence of cloudy, murky, or muddy water, or sewage back up.

C. Family day homes connected to a municipal water supply and sewer line that have open and obvious symptoms of water or sewage system problems shall have the problems corrected within a time frame established by the local public utility department.

D. There shall be an ample supply of hot and cold water available to children and caregivers for hand washing.

E. Hot water at taps available to children shall be maintained within a range of 105°F to 120°F.

22VAC40-111-360. Garbage.

A. Garbage shall be removed on a daily basis from rooms occupied by children and removed from the premises at least once weekly or more often as needed.

B. There shall be a sufficient number of garbage and diaper containers.

C. Children shall not be allowed access to garbage storage areas.

D. Garbage storage areas shall be free of litter, odor, and uncontained trash.

22VAC40-111-370. Rodents and insects.

A. The home shall be kept free from rodents and insect infestation.

B. No home shall maintain any receptacle or pool, whether natural or artificial, containing water in such condition that insects breeding therein may become a menace to public health.

22VAC40-111-380. Space.

The home shall provide each child with adequate space to allow free movement and active play indoors and out.

22VAC40-111-390. Individual location.

A. Each child who is two years of age and older shall have access to an individual location in which to keep clothing, toys, and belongings.

B. Each child who is under the age of two shall have an individual location in which to keep clothing, toys, and belongings that is accessible to the caregiver and parent.

22VAC40-111-400. Heating and cooling.

A. The temperature in all inside areas occupied by children shall be maintained no lower than 65°F.

B. Fans or other cooling systems shall be used when the temperature of inside areas occupied by children exceeds 80°F.

22VAC40-111-410. Electric fans.

Portable electric fans shall be securely mounted out of the reach of children and shall be equipped with a mesh guard.

22VAC40-111-420. Lighting.

A. All rooms, halls, and stairways used by children in care shall be lighted with natural or electric lighting for the children's safety and comfort.

B. Entrance and exit ways shall be unobstructed and be lighted with natural or electric lighting.

22VAC40-111-430. Stairs.

A. Children under two years of age and children over two years of age who are not developmentally ready to climb or descend stairs without supervision shall not have access to stairs.

B. Accordion expansion gates and pressure mounted gates shall not be used as protective barriers at stair openings.

C. Children over the age of two shall not have access to stairs with three or more risers that do not have protective barriers or guardrails on each side.

D. Protective barriers or guardrails on sides of stairs shall be constructed to prevent a child from climbing over, crawling or falling through, or becoming entrapped.

22VAC40-111-440. Decks and porches.

A. Children shall not have access to decks, porches, lofts, or balconies that do not have protective barriers or guardrails.

B. Protective barriers or guardrails shall be constructed to prevent a child from climbing over, crawling or falling through, or becoming entrapped.

22VAC40-111-450. Doors and windows.

A. Doors with clear glass panels that reach within 18 inches of the floor shall be clearly marked with decorative objects such as pictures, art work, or decals at the eye level of children in care.

B. Closet door latches shall be such that children can open the door from inside the closet.

C. Bathroom door locks shall be designed to permit opening of the locked door from the outside with a readily accessible opening device.

D. Windows and doors used for ventilation shall be securely screened.

22VAC40-111-460. Animals.

A. Family pets shall not be allowed on any surfaces where food is prepared or served.

B. Any pet or animal present at the home, indoors or outdoors, shall be in good health and show no evidence of carrying any disease.

C. Dogs or cats, where allowed, shall be vaccinated for rabies and shall be treated for fleas, ticks, or worms as needed.

D. The provider shall maintain documentation of the current rabies vaccination.

E. Caregivers shall closely supervise children when children are exposed to animals.

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F. Children shall be instructed on safe procedures to follow when in close proximity to animals, e.g., not to provoke or startle them or remove their food.

G. Animals that have shown aggressive behavior shall not be kept in the home or on the grounds.

H. Monkeys, ferrets, turtles, iguanas, psittacine birds (birds of the parrot family), or venomous and constricting snakes shall not be in areas accessible to children during the hours children are in care.

I. Animal litter boxes, toys, food dishes, and water dishes shall not be located in areas accessible to children.

J. All animal excrement shall be removed promptly, disposed of properly, and the soiled area cleaned.

22VAC40-111-470. Smoking and prohibited substances.

The provider shall ensure that:

1. No person smokes:

- a. Indoors while children are in care,
- b. In a vehicle when children are transported, or
- c. Outdoors in an area occupied by children.

2. No caregiver is under the effects of medication that impairs functioning, alcohol, or illegal drugs.

22VAC40-111-480. Play equipment and materials.

A. The family day home shall provide a sufficient quantity and variety of play materials and equipment that shall be readily accessible to children.

B. Equipment and materials used by a child shall be appropriate to the age, size, ability, and interest of the child.

C. Materials and equipment available shall include, but not be limited to, arts and crafts materials, texture materials, construction materials, music and sound materials, books, social living equipment, and manipulative equipment.

D. Equipment used by children shall be assembled, maintained, and used in accordance with the manufacturer's instructions.

E. Equipment and materials used by children shall be clean, nontoxic, and free from hazards such as lead paint, sharp edges or points, loose parts, and rust.

F. Toys mouthed by children shall be cleaned and sanitized daily.

22VAC40-111-490. Indoor slides and climbing equipment.

The climbing portions of indoor slides and climbing equipment over 18 inches high shall not be over bare floor.

22VAC40-111-500. Outdoor play area and equipment.

A. A nonclimbable barrier at least four feet high such as, but not limited to, a fence or impenetrable hedge shall surround outdoor play areas located within 30 feet of hazards such as, but not limited to, streets with speed limits in excess of 25 miles per hour or with heavy traffic, or railroad tracks. Facilities licensed prior to [insert the effective date of this regulation] must comply fully with the requirement of this subsection within one year of [insert the effective date of this regulation].

B. The highest climbing rung or platform on outdoor climbing equipment or top of a slide shall not exceed six feet for school age children and four feet for preschool children.

C. Stationary outdoor playground equipment shall:

1. Not be installed over concrete, asphalt, or any other hard surface;
2. Be placed at least six feet from the perimeter of other play structures or obstacles; and
3. Be firmly anchored with ground supports that are covered with materials to protect children from injury.

D. Outdoor play equipment shall meet the following requirements:

1. "S" hooks shall be tightly closed;
2. Swings shall have flexible seats of rubber, canvas, or nylon;
3. Nonflexible-molded seats shall be used only when a caregiver stays within arm's length of any hard-molded swing in use and is positioned to see and protect other children who might walk into the path of the swing;
4. Openings above the ground that are closed on all sides shall be smaller than 3-1/2 inches or larger than nine inches to prevent head entrapment hazards;
5. Ropes, loops or any hanging apparatus that might entrap, close, or tighten upon a child shall not be used;
6. Equipment with moving parts that might pinch or crush children's hands or fingers shall not be used unless they have guards or covers; and
7. Equipment with platforms and ramps over 30 inches high shall have been designed with guardrails or barriers to prevent falls.

E. Sandboxes shall be covered when not in use.

F. Trampolines shall not be used during the hours children are in care.

22VAC40-111-510. Rest areas.

A. A child shall be provided with an individual crib, cot, rest mat, or bed for resting or napping.

B. Upper levels of double-deck beds shall not be used.

C. Occupied cribs, cots, rest mats, and beds shall be:

1. At least three feet from any heat-producing appliance; and
2. At least 12 inches from each other.

D. Rest mats that are used must have at least an inch of cushioning.

E. Rest mats shall be cleaned and sanitized on all sides at least weekly and as needed.

22VAC40-111-520. Cribs.

A. Cribs shall be provided for children from birth through 12 months of age and for children over 12 months of age who are not developmentally ready to sleep on a cot, rest mat, or bed.

B. Cribs shall not be used as a play space for infants.

C. Cribs shall:

1. Meet the U.S. Consumer Product Safety Commission standards at the time they were manufactured;
2. Not have been recalled;
3. Have no more than six centimeters or 2-3/8 inches of space between slats;
4. Have mattresses that fit snugly next to the crib so that no more than two fingers can be inserted between the mattress and the crib;
5. Not have end panel cutouts of a size to cause head entrapment; and
6. Not have mesh sides.

D. Double-decker cribs shall not be used.

E. Crib bumper pads shall not be used.

F. Crib sides shall always be up and the fastenings secured when a child is in the crib, except when the caregiver is giving the child immediate attention.

22VAC40-111-530. Linens.

A. Cribs, cots, rest mats, and beds when being used for sleeping or napping by children other than infants shall have linens consisting of a top cover and a bottom cover or a one-piece covering that is open on three edges.

B. Cribs when being used by infants shall have a tight-fitting bottom cover.

C. Linens shall be assigned for individual use.

D. Linens shall be clean and washed at least weekly or when soiled; crib sheets shall be cleaned and washed daily.

E. Clean linens shall be used each time a child rests on the bed of a family member.

F. No soft bedding of any kind shall be used under or around infants including, but not limited to, pillows, quilts, comforters, sheepskins, or stuffed toys.

G. Children under two years of age shall not use pillows or filled comforters.

H. Pillows, when used for children over two years of age, shall be assigned for individual use and covered with pillowcases.

I. Mattresses, when used, shall be covered with a waterproof material that can be cleaned and sanitized.

22VAC40-111-540. Infant and toddler equipment.

A. Infant carrier seats, swings, strollers, feeding or activity tables, and high chairs shall be used according to the manufacturer's instructions and when occupied by a child, a safety strap shall be used and securely fastened.

B. Infant walkers shall not be used.

22VAC40-111-550. Play pens.

A play pen where used shall:

1. Have either mesh netting with mesh holes smaller than 1/4 inch or slats no more than 2-3/8 inches apart;
2. Have a firm floor with a secured, waterproof pad that is not more than one-inch thick;
3. Have the sides up and the fastenings secured when a child is in the play pen, except when the caregiver is giving the child immediate attention;
4. Be cleaned and sanitized each day of use or more often as needed;
5. Not be occupied by more than one child;
6. Not be used for the designated sleeping area;
7. Not have torn mesh sides or vinyl-covered or fabric-covered rails, protruding rivets on the rails, or broken hinges;
8. Not contain any pillows or filled comforters;
9. Not contain large toys and other objects that can serve as a stepping stool for climbing out when a child can pull to a standing position;
10. Not be used by children who weigh 30 pounds or more; and
11. Not be used by children who are 35 inches tall or taller.

22VAC40-111-560. Supervision.

A. Caregivers who are supervising children shall always ensure the children's care, protection, and guidance.

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B. When awake, infants and toddlers shall always be within actual sight and sound of a caregiver.

C. When awake, preschoolers shall always be within actual sight or sound of a caregiver. If a preschool-aged child is only within sound of a caregiver, the caregiver shall monitor the child by in-person checks at least every 15 minutes and every five minutes if the child is in the restroom.

D. Sleeping infants, toddlers, and preschoolers shall be within actual sight or sound of a caregiver.

E. If a sleeping infant, toddler, or preschooler is only within sound of a caregiver, the caregiver shall monitor the child by observing the child at least every 15 minutes.

F. Infants shall be protected from older children.

G. School age children shall be supervised in a manner that ensures a caregiver is aware of what the children are doing at all times and can promptly assist, redirect, and intervene in activities when necessary.

H. In deciding how closely to supervise school age children, caregivers shall consider the following:

1. Ages of children;
2. Individual differences and abilities;
3. Layout of the house and play area;
4. Neighborhood circumstances or hazards; and
5. Risk of activities in which children are engaged.

I. No child under five years of age or a child older than five who lacks the motor skills and strength to avoid accidental drowning, scalding, or falling while bathing shall be left unattended while in the bathtub.

22VAC40-111-570. Determining need for additional caregiver.

A. The provider shall ensure that a caregiver does not exceed 16 points by using the following point system to determine if an additional caregiver is needed:

1. Children from birth through 15 months of age count as four points each;
2. Children from 16 months through 23 months of age count as three points each;
3. Children from two through four years of age count as two points each;
4. Children from five years through nine years of age count as one point each; and
5. Children who are 10 years of age and older count as zero points.

B. A caregiver's own children and resident children under eight years of age count in point maximums.

22VAC40-111-580. General requirements for programs.

A. In order to promote the child's physical, intellectual, emotional, and social well-being and growth, caregivers shall:

1. Talk to the child;
2. Provide needed help, comfort, support;
3. Respect personal privacy;
4. Respect differences in cultural, ethnic, and family backgrounds;
5. Encourage decision-making abilities;
6. Promote ways of getting along;
7. Encourage independence and self-direction; and
8. Use consistency in applying expectations.

B. Caregivers shall provide age-appropriate activities for children in care throughout the day that:

1. Are based on the physical, social, emotional, and intellectual needs of the children;
2. Reflect the diversity of enrolled children's families, culture, and ethnic backgrounds; and
3. Enhance the total development of children.

C. Daily age-appropriate activities shall include:

1. Opportunities for alternating periods of indoor active and quiet play depending on the ages of the children;
2. Opportunities for vigorous outdoor play daily, depending upon the weather, the ages, and the health of the children;
3. Opportunities for one or more regularly scheduled rest or nap periods. Children unable to sleep shall be provided time and space for quiet play;
4. Opportunities for children to learn about themselves, others, and the world around them;
5. Opportunities for children to exercise initiative and develop independence in accordance with their ages; and
6. Opportunities for structured and unstructured play time and provider-directed and child-initiated learning activities.

22VAC40-111-590. Requirements for sleeping and resting.

A. Infants shall be placed on their backs when sleeping or napping unless otherwise ordered by a written statement signed by the child's physician.

B. An infant, toddler, or preschool child who falls asleep in a play space other than his own crib, cot, mat, or bed shall be moved promptly to his designated sleeping space if the safety or comfort of the infant, toddler, or preschool child is in question.

C. School age children shall be allowed to nap if needed, but not forced to do so.

22VAC40-111-600. Daily activities for infants and toddlers.

A. Infants and toddlers shall be provided with opportunities to:

1. Interact with caregivers and other children in the home in order to stimulate language development;
2. Play with a wide variety of safe, age-appropriate toys;
3. Receive individual attention from caregivers including, but not limited to, holding, cuddling, talking, and reading; and
4. Reach, grasp, pull up, creep, crawl, and walk to develop motor skills.

B. Infants and toddlers shall spend no more than 30 minutes of consecutive time during waking hours, with the exception of mealtimes, confined in a crib, play pen, high chair or other confining piece of equipment. The intervening time period between confinements shall be at least one hour.

22VAC40-111-610. Television, computers, videos, and video games.

A. Use of media such as, but not limited to, television, videos, video games, and computers shall be:

1. Limited to not more than a total of two hours per day; and
2. Limited to programs, tapes, websites, and software that are produced for children or are suitable for children.

B. Other activities shall be available to children during television or video viewing.

22VAC40-111-620. Care of a child with special needs.

A. Caregivers shall provide a child with special needs with the care and activities recommended in writing by a physician, psychologist, or other professional who has evaluated or treated the child.

B. The written recommendation shall:

1. Include instructions for any special treatment, diet, or restrictions in activities that are necessary for the health of the child; and
2. Be maintained in the child's record.

C. The provider shall ensure the environment is appropriate for the child based on the plan of care and shall instruct other caregivers in the proper techniques of care.

D. A caregiver shall perform only those procedures and treatments for which he has the necessary training, experience, credentials or license to perform.

E. Staffing shall be appropriate and adequate to meet the specific physical and developmental needs of a child with special needs in care.

F. The provider and the parent of the child with special needs shall mutually determine a recommendation for the level of staffing necessary to care for and supervise the child based on the child's chronological and functional age and degree of disability.

G. Within 30 days of the child's enrollment, the provider shall provide the department's representative a written recommendation for the level of staffing necessary to care for and supervise the child.

H. The department shall make the final decision regarding level of staffing or any capacity limitations necessary to care for, supervise, and protect all children in care when a child with special needs is receiving care.

I. The parent, provider, and department's representative shall review the staffing requirements annually.

J. A separate area shall be provided for the purpose of privacy for diapering, dressing, and other personal care procedures for a child above age three with special needs who requires assistance in these activities.

22VAC40-111-630. Behavioral guidance.

A. Caregivers shall use positive methods of discipline. Discipline shall be constructive in nature and include techniques such as:

1. Using limits that are fair, consistently applied, appropriate, and understandable for the child's level of development;
2. Providing children with reasons for limits;
3. Giving positively worded direction;
4. Modeling and redirecting children to acceptable behavior;
5. Helping children to constructively express their feelings and frustration to resolve conflict; and
6. Arranging equipment, materials, activities, and schedules in a way that promotes desirable behavior.

B. When time out is used as a discipline technique:

1. It shall be used sparingly and shall not exceed one minute for each year of the child's age;
2. It shall be appropriate to the child's developmental level and circumstances;
3. It shall not be used with infants or toddlers;
4. The child shall be in a safe, lighted, well-ventilated place, and within sight and sound of a caregiver; and

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5. The child shall not be left alone inside or outside the home while separated from the group.

22VAC40-111-640. Forbidden actions.

The following acts or threats thereof are forbidden:

1. Physical punishment including, but not limited to, striking a child, roughly handling or shaking a child, biting, pinching, restricting movement through binding or tying, forcing a child to assume an uncomfortable position, or exercise as punishment;

2. Enclosure in a small, confined space or any space that the child cannot freely exit himself; however, this does not apply to the use of equipment such as cribs, play pens, high chairs, and safety gates when used for their intended purpose with children preschool age or younger;

3. Punishment by another child;

4. Withholding or forcing of food, water, or rest;

5. Verbal remarks that are demeaning to the child;

6. Punishment for toileting accidents; and

7. Punishment by applying unpleasant or harmful substances.

22VAC40-111-650. Parent notifications.

A. The provider shall provide written notification to the parent within 10 business days after the effective date of the change when there is no longer liability insurance in force on the family day home operation;

1. The provider shall obtain the parent's written acknowledgement of the receipt of this notification, and

2. A copy of the parent's written acknowledgement of the receipt of this notification shall be maintained in the child's record.

B. Caregivers shall provide information daily to parents about the child's health, development, behavior, adjustment, or needs.

C. The provider shall give parents prior notice when a substitute provider will be caring for the children.

D. Caregivers shall notify parents when persistent behavioral problems are identified and such notification shall include any disciplinary steps taken in response.

E. The provider shall notify the parent immediately when the child:

1. Has a head injury or any serious injury that requires emergency medical or dental treatment;

2. Has an adverse reaction to medication administered;

3. Has been administered medication incorrectly;

4. Is lost or missing; or

5. Has died.

F. The provider shall notify a parent the same day whenever first aid is administered to the child.

G. When a child has been exposed to a communicable disease listed in the Department of Health's current communicable disease chart, the provider shall notify the parent within 24 hours or the next business day of the home's having been informed, unless forbidden by law, except for life-threatening diseases, which must be reported to parents immediately. The provider shall consult the local health department if there is a question about the communicability of a disease.

H. Parents shall be informed of any changes in the home's emergency preparedness and response plan.

I. Except in emergency evacuation or relocation situations, the provider shall inform the parent and have written permission as required by 22VAC40-111-980 whenever the child will be taken off the premises of the family day home, before such occasion.

J. If an emergency evacuation or relocation is necessary, the parent shall be informed of the child's whereabouts as soon as possible.

22VAC40-111-660. Swimming and wading activities.

A. The level of supervision by caregivers required in 22VAC40-111-560 and the point system as outlined in 22VAC40-111-570 shall be maintained while the children are participating in swimming or wading activities.

B. The family day home shall obtain:

1. Written permission from the parent of each child who participates in swimming or wading activities, and

2. A written statement from the parent advising of a child's swimming skills before the child is allowed in water above the child's shoulder height.

C. Caregivers shall have a system for accounting for all children in the water.

D. Outdoor swimming activities shall occur only during daylight hours.

E. When one or more children are in water that is more than two feet deep in a pool, lake, or other swimming area on or off the premises of the family day home:

1. A minimum of least two caregivers shall be present and able to supervise the children; and

2. An individual currently certified in basic water rescue, community water safety, water safety instruction, or lifeguarding shall be on duty supervising the children participating in swimming or wading activities at all times. The certification shall be obtained from an organization

such as, but not limited to, the American Red Cross, the YMCA, or the Boy Scouts.

22VAC40-111-670. Exclusion of sick children.

A. Unless otherwise approved by a child's health care professional, a child shall be excluded from the family day home if he has:

1. Both fever and behavior change. A fever means oral temperature over 101°F or armpit temperature over 100°F;
2. Diarrhea (more watery, less formed, more frequent stools not associated with a diet change or medication). Children in diapers who develop diarrhea shall be excluded, and children who have learned to use the toilet, but cannot make it to the toilet in time, shall also be excluded;
3. Recurrent vomiting (vomiting two or more times in 24 hours); or
4. Symptoms of a communicable disease listed in the Virginia Department of Health's current communicable disease chart.

B. If a child needs to be excluded according to subsection A of this section, the following shall apply:

1. The parents or designated emergency contact shall be contacted immediately so that arrangements can be made to remove the child from the home as soon as possible; and
2. The child shall remain in a quiet, designated area and the caregiver shall respond immediately to the child until the child leaves the home.

22VAC40-111-680. Hand washing.

A. Caregivers shall wash their hands with liquid soap and warm running water:

1. When their hands are dirty;
2. After toileting;
3. Before preparing and serving food;
4. Before feeding or helping children with feeding;
5. After contact with any body fluids;
6. After handling or caring for animals;
7. After handling raw eggs or meat; and
8. After diapering a child or assisting a child with toileting.

B. Caregivers shall ensure that children wash their hands with liquid soap and warm running water:

1. When their hands are dirty;
2. Before eating;
3. After toileting;

4. After handling or caring for animals; and
5. After contact with any body fluids.

22VAC40-111-690. Diapering and toileting.

A. A child shall not be left unattended on a changing table during diapering.

B. When a child's clothing or diaper becomes wet or soiled, the child shall be cleaned and changed immediately.

C. During each diaper change or after toileting accidents, the child's genital area shall be thoroughly cleaned with a moist disposable wipe or a moist, clean individually assigned cloth, if the child is allergic to disposable wipes.

D. The diapering surface shall be:

1. Separate from the kitchen, food preparation areas, or surfaces used for children's activities;
2. Nonabsorbent and washable; and
3. Cleaned and sanitized after each use.

E. Soiled disposable diapers and wipes shall be disposed of in a leak-proof or plastic-lined storage system that is either foot operated or used in such a way that neither the caregiver's hand nor the soiled diaper or wipe touches the exterior surface of the storage system during disposal.

F. When cloth diapers are used, a separate leak-proof storage system as specified in subsection E of this section shall be used.

G. Children five years of age and older shall be permitted privacy when toileting.

H. Caregivers shall respond promptly to a child's request for toileting assistance.

I. The provider shall consult with the parent before toilet training is initiated.

J. Toilet training shall be relaxed and pressure free.

K. There shall be a toilet chair or an adult-sized toilet with a platform or steps and adapter seat available to a child being toilet trained.

L. Toilet chairs, when used, shall be emptied promptly, cleaned and sanitized after each use.

22VAC40-111-700. General requirements for medication administration.

A. Prescription and nonprescription medications shall be given to a child:

1. According to the home's written medication policies, and
2. Only with written authorization from the parent.

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B. The parent's written authorization for medication shall expire or be renewed after 10 work days.

EXCEPTION: Long-term prescription and nonprescription drug use may be allowed with written authorization from the child's physician and parent.

C. When an authorization for medication expires, the parent shall be notified that the medication needs to be picked up within 14 days or the parent must renew the authorization. Medications that are not picked up by the parent within 14 days will be disposed of by the family day home by either dissolving the medication down the sink or flushing it down the toilet.

22VAC40-111-710. Prescription medication.

The family day home may administer prescription medication that would normally be administered by a parent or guardian to a child provided:

1. The medication is administered by a caregiver who meets the requirements in 22VAC40-111-220 A;
2. The caregiver administers only those drugs that were dispensed from a pharmacy and maintained in the original, labeled container; and
3. The caregiver administers drugs only to the child identified on the prescription label in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration.

22VAC40-111-720. Nonprescription medication.

A. The family day home may administer nonprescription medication provided the medication is:

1. Administered by a caregiver 18 years of age or older who meets the requirements in 22VAC40-111-220 C;
2. Labeled with the child's name;
3. In the original container with the manufacturer's direction label attached; and
4. Given only at the dose, duration, and method of administration specified on the manufacturer's label for the age or weight of the child needing the medication.

B. Nonprescription medication shall not be used beyond the expiration date of the product.

22VAC40-111-730. Storage of medication.

A. Medications for children in care shall be stored separately from medications for household members and caregivers.

B. When needed, medication shall be refrigerated.

C. When medication is stored in a refrigerator used for food, the medications shall be stored together in a container or in a clearly defined area away from food.

D. Medication, except for those prescriptions designated otherwise by a written physician's order, including refrigerated medication and medications for caregivers and household members, shall be kept in a locked place using a safe locking method that prevents access by children.

E. If a key is used, the key shall not be accessible to the children.

22VAC40-111-740. Medication records.

The provider shall keep a record of prescription and nonprescription medication given children, which shall include the following:

1. Name of the child to whom medication was administered;
2. Amount and type of medication administered to the child;
3. The day and time the medication was administered to the child;
4. Name of the caregiver administering the medication;
5. Any adverse reactions; and
6. Any medication administration error.

22VAC40-111-750. Sunscreen, diaper ointment, and insect repellent.

A. When sunscreen, diaper ointment and insect repellent are used, the following requirements shall be met:

1. Written parent authorization noting any known adverse reactions shall be obtained;
2. The product shall be in the original container labeled with the child's name;
3. Manufacturer's instructions for application shall be followed; and
4. Parents shall be informed immediately of any adverse reaction.

B. The product does not need to be kept locked, but shall be inaccessible to children.

C. Caregivers without medication administration training may apply the product unless it is a prescription medication, in which case the storing and administration must meet prescription medication requirements of this chapter.

D. The product shall not be used beyond the expiration date of the product.

22VAC40-111-760. First aid and emergency medical supplies.

A. The following emergency supplies shall be in the family day home, accessible to outdoor play areas, on field trips, in

vehicles used for transportation and wherever children are in care:

1. A first aid kit that contains at a minimum:
 - a. Scissors;
 - b. Tweezers;
 - c. Gauze pads;
 - d. Adhesive tape;
 - e. Adhesive bandages, assorted sizes;
 - f. Antiseptic cleaning solution or pads;
 - g. Digital thermometer;
 - h. Triangular bandages;
 - i. Single use gloves such as surgical or examination gloves;
 - j. Activated charcoal preparation (to be used only on the direction of a physician or the home's local poison control center); and
 - k. First aid instructional manual.
2. An ice pack or cooling agent.

B. The first aid kit shall be readily accessible to caregivers and inaccessible to children

22VAC40-111-770. Emergency flashlights and radios.

A working battery-operated flashlight, a working portable battery-operated weather band radio, and extra batteries shall be kept in a designated area and be available to caregivers at all times.

22VAC40-111-780. Emergency information.

A. The emergency contact information listed in 22VAC40-111-60 B 2 and the parent's written authorization for emergency medical care as required by 22VAC40-111-60 B 8 shall be made available to a physician, hospital, or emergency responders in the event of a child's illness or injury.

B. Annually, the provider shall:

1. Review with the parent the emergency contact information required in 22VAC40-111-60 B 2 to ensure the information is correct, and
2. Obtain the parent's signed acknowledgment of the review.

22VAC40-111-790. Posted telephone numbers.

The following telephone numbers shall be posted in a visible area close to the telephone:

1. A 911 or local dial number for police, fire, and emergency medical responders;

2. The responsible person for emergency backup care as required in 22VAC40-111-800 A 3; and
3. The regional poison control center.

22VAC40-111-800. Emergency preparedness and response plan.

A. The family day home shall have a written emergency preparedness and response plan that:

1. Includes emergency evacuation, emergency relocation, and shelter-in-place procedures;
2. Addresses the most likely to occur scenarios, including but not limited to natural disasters, chemical spills, and an intruder; and
3. Includes provisions for a responsible person who is 18 years of age or older and is able to arrive within 10 minutes for emergency backup care until the children can be picked up by their parents.

B. The provider shall review the emergency plan at least annually and update the plan as needed. The provider shall document in writing each review and update to the emergency plan.

C. The provider shall ensure that each caregiver receives training regarding the emergency evacuation, emergency relocation, and shelter-in-place procedures by the end of their first week of assuming job responsibilities, on an annual basis, and at the time of each plan update.

22VAC40-111-810. Evacuation and relocation procedures.

Evacuation procedures shall include:

1. Methods to alert caregivers and emergency responders;
2. Designated primary and secondary routes out of the building;
3. Designated assembly point away from the building;
4. Designated relocation sites;
5. Methods to ensure all children are evacuated from the building and, if necessary, moved to a relocation site;
6. Methods to account for all children at the assembly point and relocation site;
7. Methods to ensure essential documents, including emergency contact information, medications, and supplies are taken to the assembly point and relocation site;
8. Method of communication with parents and emergency responders after the evacuation; and
9. Method of communication with parents after the relocation.

22VAC40-111-820. Shelter-in-place procedures.

Shelter-in-place procedures shall include:

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1. Methods to alert caregivers and emergency responders;
2. Designated safe locations within the home;
3. Designated primary and secondary routes to the safe locations;
4. Methods to ensure all children are moved to the safe locations;
5. Methods to account for all children at the safe location;
6. Methods to ensure essential documents, including emergency contact information, and supplies are taken to the safe location; and
7. Method of communication with parents and emergency responders.

22VAC40-111-830. Emergency response drills.

A. The emergency evacuation procedures shall be practiced monthly with all caregivers and children in care during all shifts that children are in care.

B. Shelter-in-place procedures shall be practiced a minimum of twice per year.

C. Documentation shall be maintained of emergency evacuation and shelter-in-place drills that include:

1. Date of the event.
2. Number and ages of children involved.
3. Weather conditions, and
4. Beginning and ending time of event.

D. Records of emergency evacuation and shelter-in-place drills shall be maintained for one year.

22VAC40-111-840. Injury records.

A. The provider shall record in the child's record an injury or accident sustained by a child while at the family day home that requires first aid or emergency medical or dental treatment.

B. The information recorded shall include the following:

1. Date and time of injury.
2. Name of injured child.
3. Type and circumstance of the injury.
4. Caregiver present and action taken.
5. Date and time when parents were notified.
6. Any future action to prevent recurrence of the injury.
7. Caregiver and parent signatures or two caregiver signatures, and
8. Documentation on how the parent was notified.

22VAC40-111-850. Reports to department.

A. The provider shall report to the department within 24 hours of the circumstances surrounding the following incidents:

1. Lost or missing child when local authorities have been contacted for help.
2. Serious injury to a child while under the family day home's supervision, and
3. Death of a child while under the family day home's supervision.

B. A written report shall be completed and submitted to the department within five working days of the date the incident occurred.

22VAC40-111-860. Reports of suspected child abuse or neglect and disease outbreaks.

A. A caregiver shall immediately call the local department of social services or call the toll free number of the Child Abuse and Neglect Hotline (1-800-552-7096/TDD) whenever there is reason to suspect that a child has been or is being subjected to any kind of child abuse or neglect by any person.

B. The provider shall immediately make or cause to be made a report of an outbreak of disease as defined by the Virginia Board of Health. Such report shall be made by rapid means to the local health department or to the Commissioner of the Virginia Department of Health.

22VAC40-111-870. General requirements for meals and snacks.

A. Meals and snacks shall be served in accordance with the times children are in care, which include:

1. Between the hours of 6 a.m. and 7 p.m., breakfast, lunch, and snacks shall be served.
2. Between the hours of 2 p.m. and 10 p.m., an afternoon snack, supper and a bed time snack shall be served.
3. Between the hours of 7 p.m. and 6 a.m., a bed time snack and breakfast shall be served.

B. A family day home shall ensure that children arriving from a half-day, morning program who have not yet eaten lunch receive a lunch.

C. The family day home shall schedule snacks or meals so there is a period of at least 1-1/2 hours, but no more than three hours, between each meal or snack unless there is a scheduled rest or sleep period for children between the meals and snacks.

D. Children shall be served small-sized portions.

E. Food shall be prepared, stored, and transported in a clean and sanitary manner.

F. Leftover food shall be discarded from individual plates following a meal or snack.

G. Tables and high chair trays shall be cleaned after each use, but at least daily.

22VAC40-111-880. Meals and snacks provided by family day home.

When family day homes provide meals or snacks, the following shall apply:

1. Family day homes shall follow the most recent, age-appropriate nutritional requirements of a recognized authority such as the Child and Adult Care Food Program of the United States Department of Agriculture (UDSA).

2. Children shall be allowed second helpings of food listed in the child care food program meal patterns.

22VAC40-111-890. Meals and snacks brought from child's home.

When food is brought from home, the following shall apply:

1. The food container shall be clearly labeled in a way that identifies the owner:

2. The family day home shall have extra food or shall have provisions to obtain food to serve to a child so the child can have an appropriate snack or meal as required in 22VAC40-111-880 if the child forgets to bring food from home or brings an inadequate meal or snack; and

3. Unused portions of food shall be discarded by the end of the day or returned to the parent.

22VAC40-111-900. Preventing choking.

A. To assist in preventing choking, food that is hard, round, small, thick and sticky, or smooth and slippery such as whole hot dogs sliced into rounds, nuts, seeds, raisins, uncut grapes, uncut raw carrots, peanuts, chunks of peanut butter, hard candy, and popcorn shall not be served to children under four years of age, unless the food is prepared before being served in a manner that will reduce the risk of choking, i.e., hot dogs cut lengthwise, grapes cut in small pieces, and carrots cooked or cut lengthwise.

B. Children shall not be allowed to eat or drink while walking, running, playing, lying down, or riding in vehicles.

22VAC40-111-910. Drinking water and fluids.

A. Water shall be available for drinking and shall be offered on a regular basis to all children in care.

B. In environments of 80°F or above, attention shall be given to the fluid needs of children at regular intervals. Children in such environments shall be encouraged to drink fluids.

C. Clean individual drinking cups shall be provided daily. Children shall not be allowed to share common drinking cups.

22VAC40-111-920. Menus.

When meals or snacks are provided by the family day home, the menu for the current one-week period shall:

1. Be dated.

2. Be given to parents or posted or placed in an area accessible to parents.

3. List any substituted food, and

4. Be kept on file one week at the family day home.

22VAC40-111-930. Eating utensils and dishes.

A. Eating utensils shall be appropriate in size for children to handle.

B. Chipped or cracked dishes shall not be used.

C. Eating utensils and dishes shall be properly cleaned by prerinseing, washing, and air drying or using a dishwasher.

D. Eating utensils and dishes shall be stored in a clean dry place, and protected from contamination.

E. If disposable eating utensils and dishes are used, they shall be sturdy enough to prevent spillage or other health and safety hazards.

F. Disposable utensils and dishes shall be used once and discarded.

22VAC40-111-940. Food storage.

A. Temperatures shall be maintained at or below 40°F in refrigerator compartments and at or below 0°F in the freezer compartments.

B. The provider shall have an operable thermometer available to monitor refrigerator and freezer compartment temperatures.

C. All perishable foods and drinks used for children in care, except when being prepared and served, shall be kept in the refrigerator.

D. Leftover food shall be discarded from individual plates following a meal or snack.

22VAC40-111-950. Milk.

A. All milk and milk products shall be pasteurized.

B. Powdered milk shall be used only for cooking.

22VAC40-111-960. Feeding infants.

A. Infants shall be fed on demand unless the parent provides other written instructions.

B. Infants who cannot hold their own bottles shall be picked up and held for bottle feeding. Bottles shall not be propped.

C. High chairs, infant carrier seats, or feeding tables with safety waist and crotch straps fastened according to the

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manufacturer's instructions shall be used for children under 12 months of age who are not held while being fed.

D. Infant formula shall be prepared according to the manufacturer's or physician's instructions.

E. Bottles shall be refrigerated and labeled with the child's full name and the date, if more than one infant is in care.

F. Refrigerated bottles of prepared formula and breast milk shall be discarded after 48 hours if not used.

G. Bottles shall not be heated in a microwave oven.

H. To avoid burns, heated formula and baby food shall be stirred or shaken and tested for temperature before being served to children.

I. A child's mother shall be granted access to a private area of the family day home to facilitate breast feeding.

J. Solid foods shall:

1. Not be fed to infants less than four months of age without parental consent, and

2. Be fed with a spoon, with the exception of finger foods.

K. Baby food shall be served from a dish and not from the container.

L. Baby food remaining in:

1. A serving dish shall be discarded;

2. Opened containers, from which a portion has been removed, shall be refrigerated and labeled with the child's full name and the date, if more than one infant is in care; and

3. Opened containers stored in the refrigerator shall be discarded if not consumed within 24 hours of storage.

22VAC40-111-970. Special feeding needs.

A. The consistency of food provided for a child with special needs shall be appropriate to any special feeding needs of the child.

B. Necessary and adaptive feeding equipment and feeding techniques shall be used for a child with special feeding needs.

22VAC40-111-980. Written permission for transportation and field trips.

A. General written permission shall be obtained from the parent of each child for the provider to take the child off the premises of the family day home. The general written permission shall be on a form that lists regularly scheduled trips (e.g., library, store, playground) and the driver, if the child is to be transported.

B. Special written permission shall be obtained from the parent of each child for the provider to take the child on

special field trips (those not regularly scheduled). The written special permission shall specify destination, duration of trip, and driver, if the child is to be transported.

22VAC40-111-990. Requirements for drivers.

A. Drivers must be 18 years of age or older.

B. The provider shall ensure that during transportation of children the driver has:

1. A valid driver's license;

2. The name, address and telephone number of the family day home;

3. A copy of the parent's written permission to transport the child;

4. A copy of each child's emergency contact information as required in 22VAC40-111-60 B 2;

5. Emergency supplies as required in 22VAC40-111-760; and

6. A mechanism for making telephone calls to emergency responders and parents (e.g., change, calling card, cellular phone).

22VAC40-111-1000. Requirements for vehicles.

The provider shall ensure that the vehicle used for transportation:

1. Meets the safety standards set by the Virginia Department of Motor Vehicles,

2. Is kept in satisfactory condition to assure the safety of children,

3. Is licensed and insured according to state law,

4. Was manufactured for the purpose of transporting people seated in an enclosed area, and

5. Has seats that are attached to the floor.

22VAC40-111-1010. Requirements for transportation.

The provider shall ensure that during transportation of children:

1. Each child is in an individual car seat or individual and appropriate restraint in accordance with Virginia law,

2. Each child's arms, legs, and head remain inside the vehicle,

3. Doors are closed properly and locked unless locks were not installed by the manufacturer of the vehicle,

4. No child is left unattended inside or outside a vehicle, and

5. Each child boards and leaves the vehicle from the curb side of the street.

22VAC40-111-1020. Nighttime care.

A. For nighttime care during which a child sleeps more than two hours, the following is required:

1. A child shall have a rest area that meets the requirements of 22VAC40-111-510.

2. An infant shall have an individual crib that meets the requirements of 22VAC40-111-520, and

3. Linens shall be provided that meet the requirements in 22VAC40-111-530.

B. For children in nighttime care, quiet activities and experiences shall be available immediately before bedtime.

C. Providers shall establish a bedtime schedule for a child in consultation with the child's parent.

D. Separate sleeping and dressing areas shall be provided for children of the opposite sex over six years of age.

E. Each child shall have a toothbrush, and a comb or hair brush assigned for individual use.

F. Each child nine months of age or older shall have flame-resistant or snug-fitting sleepwear.

G. Bath towels and washcloths, when used, shall be assigned for individual use and laundered as needed, but at least weekly.

H. A child shall have a routine that encourages good personal hygiene practices including bathing (if needed) and teeth brushing.

I. Caregivers shall remain awake until all children are asleep and shall sleep on the same floor level as the children in care.

J. A baby monitor shall be used if the caregiver is not sleeping in the room with the child or in a room adjacent to the room where the child is sleeping.

VA.R. Doc. No. R03-186; Filed January 13, 2009, 3:22 p.m.

Final Regulation

Title of Regulation: **22VAC40-705. Child Protective Services (amending 22VAC40-705-10, 22VAC40-705-30, 22VAC40-705-40, 22VAC40-705-50, 22VAC40-705-70, 22VAC40-705-80, 22VAC40-705-120, 22VAC40-705-140, 22VAC40-705-150, 22VAC40-705-180).**

Statutory Authority: §§ 63.2-217 and 63.2-1503 of the Code of Virginia.

Effective Date: March 4, 2009.

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Summary:

This amendments incorporate current Code of Virginia requirements and clarify existing regulations. These changes include (i) expanding the definitions of physical and medical neglect, (ii) clarifying the use of state criminal history searches in child protective services investigations, (iii) revising the length of time local departments have to validate a report or complaint, and (iv) amending training requirements.

A change from the proposed regulation retains the existing language in 22VAC40-705-80 regarding the exception to electronically recording a victim interview.

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.

22VAC40-705-10. Definitions.

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

"Abuser or neglector" means any person who is found to have committed the abuse and/or neglect of a child pursuant to Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2 of the Code of Virginia.

"Administrative appeal rights" means the child protective services appeals procedures for a local level informal conference and a state level hearing pursuant to § 63.2-1526 of the Code of Virginia, under which an individual who is found to have committed abuse and/or neglect may request that the local department's records be amended.

"Alternative treatment options" means treatments used to prevent or treat illnesses or promote health and well-being outside the realm of modern conventional medicine.

"Appellant" means anyone who has been found to be an abuser and/or neglector and appeals the founded disposition to the director of the local department of social services, an administrative hearing officer, or to circuit court.

"Assessment" means the process by which child protective services workers determine a child's and family's needs.

"Caretaker" means any individual having the responsibility of providing care for a child and includes the following: (i) parent or other person legally responsible for the child's care; (ii) any other person who has assumed caretaking responsibility by virtue of an agreement with the legally responsible person; (iii) persons responsible by virtue of their positions of conferred authority; and (iv) adult persons residing in the home with the child.

"Case record" means a collection of information maintained by a local department, including written material, letters,

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documents, tapes, photographs, film or other materials regardless of physical form about a specific child protective services investigation, family or individual.

"Central Registry" means a subset of the child abuse and neglect information system and is the name index with identifying information of individuals named as an abuser and/or neglector in founded child abuse and/or neglect complaints or reports not currently under administrative appeal, maintained by the department.

"Certified substance abuse counselor" means a person certified to provide substance abuse counseling in a state-approved public or private substance abuse program or facility.

"Child abuse and neglect information system" means the computer system which collects and maintains information regarding incidents of child abuse and neglect involving parents or other caretakers. The computer system is composed of three parts: the statistical information system with nonidentifying information, the Central Registry of founded complaints not on appeal, and a database that can be accessed only by the department and local departments that contains all nonpurged CPS reports. This system is the official state automated system.

"Child protective services" means the identification, receipt and immediate response to complaints and reports of alleged child abuse and/or neglect for children under 18 years of age. It also includes assessment, and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child protective services worker" means one who is qualified by virtue of education, training and supervision and is employed by the local department to respond to child protective services complaints and reports of alleged child abuse and/or neglect.

"Chronically and irreversibly comatose" means a condition caused by injury, disease or illness in which a patient has suffered a loss of consciousness with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner other than reflexive activity of muscles and nerves for low-level conditioned response and from which to a reasonable degree of medical probability there can be no recovery.

"Collateral" means a person whose personal or professional knowledge may help confirm or rebut the allegations of child abuse and/or neglect or whose involvement may help ensure the safety of the child.

"Complaint" means any information or allegation of child abuse and/or neglect made orally or in writing pursuant to § 63.2-100 of the Code of Virginia.

"Consultation" means the process by which the alleged abuser and/or neglector may request an informal meeting to discuss the investigative findings with the local department prior to the local department rendering a founded disposition of abuse and/or neglect against that person pursuant to § 63.2-1526 A of the Code of Virginia.

"Controlled substance" means a drug, substance or marijuana as defined in § 18.2-247 of the Code of Virginia including those terms as they are used or defined in the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia. The term does not include alcoholic beverages or tobacco as those terms are defined or used in Title 3.1 or Title 4.1 of the Code of Virginia.

"Department" means the Virginia Department of Social Services.

"Differential response system" means that local departments of social services may respond to valid reports or complaints of child abuse or neglect by conducting either a family assessment or an investigation.

"Disposition" means the determination of whether or not child abuse and/or neglect has occurred.

"Documentation" means information and materials, written or otherwise, concerning allegations, facts and evidence.

"Family Advocacy Program representative" means the professional employed by the United States Armed Forces who has responsibility for the program designed to address prevention, identification, evaluation, treatment, rehabilitation, follow-up and reporting of family violence, pursuant to 22VAC40-720-20.

"Family assessment" means the collection of information necessary to determine:

1. The immediate safety needs of the child;
2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;
3. Risk of future harm to the child; and
4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services. These arrangements may be made in consultation with the caretaker(s) of the child.

"First source" means any direct evidence establishing or helping to establish the existence or nonexistence of a fact. Indirect evidence and anonymous complaints do not constitute first source evidence.

"Founded" means that a review of the facts shows by a preponderance of the evidence that child abuse and/or neglect has occurred. A determination that a case is founded shall be based primarily on first source evidence; in no instance shall

a determination that a case is founded be based solely on indirect evidence or an anonymous complaint.

"He" means he or she.

"His" means his or her.

"Identifying information" means name, social security number, address, race, sex, and date of birth.

"Indirect evidence" means any statement made outside the presence of the child protective services worker and relayed to the child protective services worker as proof of the contents of the statement.

"Informed opinion" means that the child has been informed and understands the benefits and risks, to the extent known, of the treatment recommended by conventional medical providers for his condition and the alternative treatment being considered as well as the basis of efficacy for each, or lack thereof.

"Investigation" means the collection of information to determine:

1. The immediate safety needs of the child;
2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;
3. Risk of future harm to the child;
4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services;
5. Whether or not abuse or neglect has occurred;
6. If abuse or neglect has occurred, who abused or neglected the child; and
7. A finding of either founded or unfounded based on the facts collected during the investigation.

"Investigative narrative" means the written account of the investigation contained in the child protective services case record.

"Legitimate interest" means a lawful, demonstrated privilege to access the information as defined in § 63.2-104 of the Code of Virginia.

"Licensed substance abuse treatment practitioner" means a person who (i) is trained in and engages in the practice of substance abuse treatment with individuals or groups of individuals suffering from the effects of substance abuse or dependence, and in the prevention of substance abuse or dependence and (ii) is licensed to provide advanced substance abuse treatment and independent, direct and unsupervised treatment to such individuals or groups of individuals, and to plan, evaluate, supervise, and direct substance abuse treatment provided by others.

"Life-threatening condition" means a condition that if left untreated more likely than not will result in death and for which the recommended medical treatments carry a probable chance of impairing the health of the individual or a risk of terminating the life of the individual.

"Local department" means the city or county local agency of social services or department of public welfare in the Commonwealth of Virginia responsible for conducting investigations or family assessments of child abuse and/or neglect complaints or reports pursuant to § 63.2-1503 of the Code of Virginia.

"Local department of jurisdiction" means the local department in the city or county in Virginia where the alleged victim child resides or in which the alleged abuse and/or neglect is believed to have occurred. If neither of these is known, then the local department of jurisdiction shall be the local department in the county or city where the abuse and/or neglect was discovered.

"Mandated reporters" means those persons who are required to report suspicions of child abuse and/or neglect pursuant to § 63.2-1509 of the Code of Virginia.

"Monitoring" means contacts with the child, family and collaterals which provide information about the child's safety and the family's compliance with the service plan.

"Multidisciplinary teams" means any organized group of individuals representing, but not limited to, medical, mental health, social work, education, legal and law enforcement, which will assist local departments in the protection and prevention of child abuse and neglect pursuant to § 63.2-1503 K of the Code of Virginia. Citizen representatives may also be included.

"Notification" means informing designated and appropriate individuals of the local department's actions and the individual's rights.

"Particular medical treatment" means a process or procedure that is recommended by conventional medical providers and accepted by the conventional medical community.

"Preponderance of evidence" means the evidence as a whole shows that the facts are more probable and credible than not. It is evidence which is of greater weight or more convincing than the evidence offered in opposition.

"Purge" means to delete or destroy any reference data and materials specific to subject identification contained in records maintained by the department and the local department pursuant to §§ 63.2-1513 and 63.2-1514 of the Code of Virginia.

"Reasonable diligence" means the exercise of justifiable and appropriate persistent effort.

"Report" means either a complaint as defined in this section or an official document on which information is given

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concerning abuse and neglect. A report is required to be made by persons designated herein and by local departments in those situations in which a response to a complaint from the general public reveals suspected child abuse and/or neglect pursuant to subdivision 5 of the definition of abused or neglected child in § 63.2-100 of the Code of Virginia.

"Safety plan" means an immediate course of action designed to protect a child from abuse or neglect.

"Service plan" means a plan of action to address the service needs of a child and/or his family in order to protect a child and his siblings, to prevent future abuse and neglect, and to preserve the family life of the parents and children whenever possible.

"State automated system" means the "child abuse and neglect information system" as previously defined.

"Substance abuse counseling or treatment services" are services provided to individuals for the prevention, diagnosis, treatment, or palliation of chemical dependency, which may include attendant medical and psychiatric complications of chemical dependency.

"Sufficiently mature" is determined on a case-by-case basis and means that a child has no impairment of his cognitive ability and is of a maturity level capable of having intelligent views on the subject of his health condition and medical care.

"Terminal condition" means a condition caused by injury, disease or illness from which to a reasonable degree of medical probability a patient cannot recover and (i) the patient's death is imminent or (ii) the patient is chronically and irreversibly comatose.

"Unfounded" means that a review of the facts does not show by a preponderance of the evidence that child abuse or neglect occurred.

"Valid report or complaint" means the local department of social services has evaluated the information and allegations of the report or complaint and determined that the local department shall conduct an investigation or family assessment because the following elements are present:

1. The alleged victim child or children are under the age of 18 at the time of the complaint or report;
2. The alleged abuser is the alleged victim child's parent or other caretaker;
3. The local department receiving the complaint or report is a local department of jurisdiction; and
4. The circumstances described allege suspected child abuse or neglect.

"Withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening condition by providing treatment (including appropriate nutrition, hydration, and medication) which in the treating physician's

or physicians' reasonable medical judgment will most likely be effective in ameliorating or correcting all such conditions.

22VAC40-705-30. Types of abuse and neglect.

A. Physical abuse occurs when a caretaker creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon a child a physical injury by other than accidental means or creates a substantial risk of death, disfigurement, or impairment of bodily functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248 of the Code of Virginia.

B. Physical neglect occurs when there is the failure to provide food, clothing, shelter, or supervision for a child to the extent that the child's health or safety is endangered. This also includes abandonment and situations where the parent's or caretaker's own incapacitating behavior or absence prevents or severely limits the performing of child caring tasks pursuant to § 63.2-100 of the Code of Virginia. This also includes a child under the age of 18 whose parent or other person responsible for his care knowingly leaves the child alone in the same dwelling as a person, not related by blood or marriage, who has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § 9.1-902 of the Code of Virginia. In situations where the neglect is the result of family poverty and there are no outside resources available to the family, the parent or caretaker shall not be determined to have neglected the child; however, the local department may provide appropriate services to the family.

1. Physical neglect may include multiple occurrences or a one-time critical or severe event that results in a threat to health or safety.

2. Physical neglect may include failure to thrive.

a. Failure to thrive occurs as a syndrome of infancy and early childhood which is characterized by growth failure, signs of severe malnutrition, and variable degrees of developmental retardation.

b. Failure to thrive can only be diagnosed by a physician and is caused by nonorganic factors.

C. Medical neglect occurs when there is the failure by the caretaker to obtain or follow through with a complete regimen of medical, mental or dental care for a condition which if untreated could result in illness or developmental delays pursuant to § 63.2-100 of the Code of Virginia. However, a decision by parents or other persons legally responsible for the child to refuse a particular medical treatment for a child

with life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such decision is made jointly by the parents or other person legally responsible for the child and the child; (ii) the child has reached 14 years of age and sufficiently mature to have an informed opinion on the subject of his medical treatment; (iii) the parents or other person legally responsible for the child and the child have considered alternative treatment options; and (iv) the parents or other person legally responsible for the child and the child believe in good faith that such decision is in the child's best interest. Medical neglect also includes withholding of medically indicated treatment.

1. A child who, in good faith, is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination pursuant to § 63.2-100 of the Code of Virginia shall not for that reason alone be considered a neglected child.

2. For the purposes of this regulation, "withholding of medically indicated treatment" does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when in the treating physician's or physicians' reasonable medical judgment:

- a. The infant is chronically and irreversibly comatose;
- b. The infant has a terminal condition and the provision of such treatment would:
 - (1) Merely prolong dying;
 - (2) Not be effective in ameliorating or correcting all of the infant's life-threatening conditions;
 - (3) Otherwise be futile in terms of the survival of the infant; or
 - (4) Be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

D. Mental abuse or neglect occurs when a caretaker creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon a child a mental injury by other than accidental means or creates a substantial risk of impairment of mental functions.

Mental abuse or neglect may include failure to thrive.

- 1. Failure to thrive occurs as a syndrome of infancy and early childhood which is characterized by growth failure, signs of severe malnutrition, and variable degrees of developmental retardation.
- 2. Failure to thrive can only be diagnosed by a physician and is caused by nonorganic factors.

E. Sexual abuse occurs when there is any act of sexual exploitation or any sexual act upon a child in violation of the law which is committed or allowed to be committed by the

child's parents or other persons responsible for the care of the child pursuant to § 63.2-100 of the Code of Virginia.

22VAC40-705-40. Complaints and reports of suspected child abuse and/or neglect.

A. Persons who are mandated to report are those individuals defined in § 63.2-1509 of the Code of Virginia.

1. Mandated reporters shall report immediately any suspected abuse or neglect that they learn of in their professional capacity.

2. Mandated reporters shall disclose all information that is the basis for the suspicion of child abuse or neglect and shall make available, upon request, to the local department any records and reports that document the basis for the complaint and/or report.

3. A mandated reporter's failure to report within 72 hours of the first suspicion of child abuse or neglect shall result in a fine.

4. Pursuant to § 63.2-1509 B of the Code of Virginia, certain specified facts indicating that a newborn infant may have been exposed to controlled substances prior to birth or a positive drug toxicology of the mother indicating the presence of a controlled substance are sufficient to suspect that a child is abused or neglected. A diagnosis of fetal alcohol syndrome is also sufficient. Any report made pursuant to § 63.2-1509 A of the Code of Virginia constitutes a valid report of abuse or neglect and requires a child protective services investigation or family assessment, unless the mother sought treatment or counseling as required in this section and pursuant to § 63.2-1505 B of the Code of Virginia.

a. The attending physician may designate a hospital staff person to make the report to the local department on behalf of the attending physician. That hospital staff person may include a nurse or hospital social worker.

b. Pursuant to § 63.2-1509 of the Code of Virginia, whenever a physician makes a finding pursuant to § 63.2-1509 A of the Code of Virginia, then the physician or his designee must make a report to child protective services immediately. Pursuant to § 63.2-1509 D of the Code of Virginia, a physician who fails to make a report pursuant to § 63.2-1509 A of the Code of Virginia is subject to a fine.

c. When a report or complaint alleging abuse or neglect is made pursuant to § 63.2-1509 A of the Code of Virginia, then the local department must immediately assess the infant's circumstances and any threat to the infant's health and safety. Pursuant to 22VAC40-705-110 A, the local department must conduct an initial assessment.

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d. When a report or complaint alleging abuse or neglect is made pursuant to § 63.2-1509 A of the Code of Virginia, then the local department must immediately determine whether to petition a juvenile and domestic relations district court for any necessary services or court orders needed to ensure the safety and health of the infant.

e. Within ~~the first 14~~ five days of receipt of a report made pursuant to § 63.2-1509 A of the Code of Virginia, the local department shall invalidate the complaint if the following two conditions are met: (i) the mother of the infant sought substance abuse counseling or treatment during her pregnancy prior to the infant's birth and (ii) there is no evidence of child abuse and/or neglect by the mother after the infant's birth.

(1) The local department must notify the mother immediately upon receipt of a complaint made pursuant to § 63.2-1509 A of the Code of Virginia. This notification must include a statement informing the mother that, if the mother fails to present evidence within 44 five days of receipt of the complaint that she sought substance abuse counseling/treatment during the pregnancy, the report will be accepted as valid and an investigation or family assessment initiated.

(2) If the mother sought counseling or treatment but did not receive such services, then the local department must determine whether the mother made a substantive effort to receive substance abuse treatment before the child's birth. If the mother made a substantive effort to receive treatment or counseling prior to the child's birth, but did not receive such services due to no fault of her own, then the local department should invalidate the complaint or report.

(3) If the mother sought or received substance abuse counseling or treatment, but there is evidence, other than exposure to a controlled substance, that the child may be abused or neglected, then the local department may initiate the investigation or family assessment.

f. Substance abuse counseling or treatment includes, but is not limited to, education about the impact of alcohol, controlled substances and other drugs on the fetus and on the maternal relationship; education about relapse prevention to recognize personal and environmental cues which may trigger a return to the use of alcohol or other drugs.

g. The substance abuse counseling or treatment should attempt to serve the purposes of improving the pregnancy outcome, treating the substance abuse disorder, strengthening the maternal relationship with existing children and the infant, and achieving and maintaining a sober and drug-free lifestyle.

h. The substance abuse counseling or treatment services must be provided by a professional. Professional substance abuse treatment or counseling may be provided by a certified substance abuse counselor or a licensed substance abuse treatment practitioner.

i. Facts indicating that the infant may have been exposed to controlled substances prior to birth are not sufficient, in and of themselves, to render a founded disposition of abuse or neglect. The local department must establish, by a preponderance of the evidence, that the infant was abused or neglected according to the statutory and regulatory definitions of abuse and neglect.

j. The local department may provide assistance to the mother in locating and receiving substance abuse counseling or treatment.

B. Persons who may report child abuse and/or neglect include any individual who suspects that a child is being abused and/or neglected pursuant to § 63.2-1510 of the Code of Virginia.

C. Complaints and reports of child abuse and/or neglect may be made anonymously. An anonymous complaint, standing alone, shall not meet the preponderance of evidence standard necessary to support a founded determination.

D. Any person making a complaint and/or report of child abuse and/or neglect shall be immune from any civil or criminal liability in connection therewith, unless the court decides that such person acted in bad faith or with malicious intent pursuant to § 63.2-1512 of the Code of Virginia.

E. When the identity of the reporter is known to the department or local department, these agencies shall make every effort to protect the reporter's identity. Upon request, the local department shall advise the person who was the subject of an unfounded investigation if the complaint or report was made anonymously.

F. If a person suspects that he is the subject of a report or complaint of child abuse and/or neglect made in bad faith or with malicious intent, that person may petition the court for access to the record including the identity of the reporter or complainant pursuant to § 63.2-1514 of the Code of Virginia.

G. Any person age 14 years or older who makes or causes to be made a knowingly false complaint or report of child abuse and/or neglect and is convicted shall be guilty of a Class 1 misdemeanor for a first offense pursuant to § 63.2-1513 of the Code of Virginia.

1. A subsequent conviction results in a Class 6 felony.

2. Upon receipt of notification of such conviction, the department will retain a list of convicted reporters.

3. The subject of the records may have the records purged upon presentation of proof of such conviction.

H. To make a complaint or report of child abuse and/or neglect, a person may telephone the department's toll-free child abuse and neglect hotline or contact a local department of jurisdiction pursuant to § 63.2-1510 of the Code of Virginia.

1. The local department of jurisdiction that first receives a complaint or report of child abuse and/or neglect shall assume responsibility to ensure that a family assessment or an investigation is conducted.
2. A local department may ask another local department that is a local department of jurisdiction to assist in conducting the family assessment or investigation. If assistance is requested, the local department shall comply.
3. A local department may ask another local department through a cooperative agreement to assist in conducting the family assessment or investigation.
4. If a local department employee is suspected of abusing and/or neglecting a child, the complaint or report of child abuse and/or neglect shall be made to the juvenile and domestic relations district court of the county or city where the alleged abuse and/or neglect was discovered. The judge shall assign the report to a local department that is not the employer of the subject of the report pursuant to §§ 63.2-1509 and 63.2-1510 of the Code of Virginia. The judge may consult with the department in selecting a local department to respond.

22VAC40-705-50. Actions to be taken upon receipt of a complaint or report.

A. All complaints and reports of suspected child abuse and/or neglect shall be recorded in the child abuse and neglect information system and either screened out or determined valid within ~~14~~ five days of receipt. A record of all reports and complaints made to a local department or to the department, regardless of whether the report or complaint was found to be a valid complaint of abuse and/or neglect, shall be retained for one year from the date of the complaint.

B. In all valid complaints or reports of child abuse and/or neglect the local department of social services shall determine whether to conduct an investigation or a family assessment. A valid complaint or report is one in which:

1. The alleged victim child or children are under the age of 18 at the time of the complaint and/or report;
2. The alleged abuser is the alleged victim child's parent or other caretaker;
3. The local department receiving the complaint or report is a local department of jurisdiction; and
4. The circumstances described allege suspected child abuse and/or neglect as defined in § 63.2-100 of the Code of Virginia.

C. The local department shall not conduct a family assessment or investigate complaints or reports of child abuse and/or neglect that fail to meet all of the criteria in subsection B of this section.

D. The local department shall report certain cases of suspected child abuse or neglect to the local attorney for the Commonwealth and the local law-enforcement agency pursuant to § 63.2-1503 D of the Code of Virginia.

E. Pursuant to § 63.2-1503 J of the Code of Virginia, local departments shall develop, where practical, memoranda of understanding for responding to reports of child abuse and neglect with local law enforcement and the local office of the commonwealth's attorney.

F. The local department shall report to the following when the death of a child is involved:

1. When abuse and/or neglect is suspected in any case involving the death of a child, the local department shall report the case immediately to the regional medical examiner pursuant to § 63.2-1503 E of the Code of Virginia.
2. When abuse and/or neglect is suspected in any case involving the death of a child, the local department shall report the case immediately to the attorney for the Commonwealth and the local law-enforcement agency pursuant to § 63.2-1503 D of the Code of Virginia.
3. The local department shall contact the department immediately upon receiving a complaint involving the death of a child and at the conclusion of the investigation.
4. The department shall immediately, upon receipt of information, report on all child fatalities to the state board in a manner consistent with department policy and procedures approved by the board. At a minimum, the report shall contain information regarding any prior statewide child protective services involvement of the family, alleged perpetrator, or victim.

G. Valid complaints or reports shall be screened for high priority based on the following:

1. The immediate danger to the child;
2. The severity of the type of abuse or neglect alleged;
3. The age of the child;
4. The circumstances surrounding the alleged abuse or neglect;
5. The physical and mental condition of the child; and
6. Reports made by mandated reporters.

H. The local department shall initiate an immediate response. The response shall be a family assessment or an investigation. Any valid report may be investigated, but in accordance with § 63.2-1506 C of the Code of Virginia, those

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cases shall be investigated that involve: (i) sexual abuse, (ii) a child fatality, (iii) abuse or neglect resulting in a serious injury as defined in § 18.2-371.1 of the Code of Virginia, (iv) a child having been taken into the custody of the local department of social services, or (v) a caretaker at a state-licensed child day care center, religiously exempt child day center, regulated family day home, private or public school, or hospital or any institution.

1. The purpose of an investigation is to collect the information necessary to determine or assess the following:

- a. Immediate safety needs of the child;
- b. Whether or not abuse or neglect has occurred;
- c. Who abused or neglected the child;
- d. To what extent the child is at risk of future harm, either immediate or longer term;
- e. What types of services can meet the needs of this child or family; and
- f. If services are indicated and the family appears to be unable or unwilling to participate in services, what alternate plans will provide for the child's safety.

2. The purpose of a family assessment is to engage the family in a process to collect the information necessary to determine or assess the following:

- a. Immediate safety needs of the child;
- b. The extent to which the child is at risk of future harm, either immediate or longer term;
- c. The types of services that can meet the needs of this child or family; and
- d. If services are indicated and the family appears to be unable or unwilling to participate in services, the plans that will be developed in consultation with the family to provide for the child's safety. These arrangements may be made in consultation with the caretaker(s) of the child.

3. The local department shall use reasonable diligence to locate any child for whom a report or complaint of suspected child abuse and/or neglect has been received and determined valid or persons who are the subject of a valid report if the whereabouts of such persons are unknown to the local department pursuant to § 63.2-1503 F of the Code of Virginia.

4. The local department shall document its attempts to locate the child and family.

5. In the event the alleged victim child or children cannot be found, the time the child cannot be found shall not be computed as part of the 45-60-day time frame to complete the investigation, pursuant to subdivision 5 of § 63.2-1505 of the Code of Virginia.

22VAC40-705-70. Collection of information.

A. When conducting an investigation the local department shall seek first-source information about the allegation of child abuse and/or neglect. When applicable, the local department shall include in the case record: police reports; depositions; photographs; physical, medical and psychological reports; and any ~~tape~~ electronic recordings of interviews.

B. When completing a family assessment, the local department shall gather all relevant information in collaboration with the family, to the degree possible, in order to determine the child and family services needs related to current safety or future risk of harm to the child.

C. All information collected must be entered in the state automated system and maintained according to § 63.2-1514 for unfounded investigations or family assessments or according to 22VAC40-700-30 for founded investigations. The automated record entered in the statewide automation system is the official record. When documentation is not available in electronic form, it must be maintained in the hard copy portion of the record. Any hard copy information, including photographs and recordings, shall be noted as an addendum to the official record.

22VAC40-705-80. Family assessment and investigation contacts.

A. During the course of the family assessment, the child protective services (CPS) worker shall make and record the following contacts and observations.

1. The child protective services worker shall conduct a face-to-face interview with and observe the alleged victim child and siblings.
2. The child protective services worker shall conduct a face-to-face interview with the alleged victim child's parents or guardians and/or any caretaker named in the report.
3. The child protective services worker shall observe the family environment, contact pertinent collaterals, and review pertinent records in consultation with the family.

B. During the course of the investigation, the child protective services (CPS) worker shall make and record in writing in the state automated system the following contacts and observations. When any of these contacts or observations is not made, the CPS worker shall record in writing why the specific contact or observation was not made.

1. The child protective services worker shall conduct a face-to-face interview with and observation of the alleged victim child and siblings. All interviews with alleged victim children must be ~~audio-tape~~ electronically recorded except when the child protective services worker determines that:

- a. The child's safety may be endangered by ~~audio taping~~ electronically recording his statement;
- b. The age and/or developmental capacity of the child makes ~~audio taping~~ electronic recording impractical;
- c. A child refuses to participate in the interview if ~~audio taping~~ electronic recording occurs; or
- d. [In the context of a team investigation with law-enforcement personnel, the team or team leader determines that audio taping is not appropriate. ~~The local Commonwealth Attorney determines that electronic recording of the victim interview during the CPS investigation is not appropriate in the context of the eriminal investigation.~~]
- e. The victim provided new information as part of a family assessment and it would be detrimental to reinterview the victim and the child protective services worker provides a detailed narrative of the interview in the investigation record.

In the case of an interview conducted with a nonverbal child where none of the above exceptions apply, it is appropriate to ~~audio tape~~ electronically record the questions being asked by the child protective services worker and to describe, either verbally or in writing, the child's responses. A child protective services worker shall document in detail in the record and discuss with supervisory personnel the basis for a decision not to ~~audio tape~~ electronically record an interview with the alleged victim child.

A child protective services finding may be based on the written narrative of the child protective services worker in cases where an ~~audio~~ electronic recording is unavailable due to equipment failure or ~~other cause~~ the above exceptions.

- 2. The child protective services (CPS) worker shall conduct a face-to-face interview with the alleged abuser and/or neglector.
 - a. The CPS worker shall inform the alleged abuser and/or neglector of his right to tape record any communication pursuant to § 63.2-1516 of the Code of Virginia.
 - b. ~~The~~ If requested by the alleged abuser and/or neglector, the local department shall provide the necessary equipment in order to ~~tape~~ electronically record the interview and retain a copy of the ~~tape for the record~~ electronic recording.
- 3. The child protective services worker shall conduct a face-to-face interview with the alleged victim child's parents or guardians.
- 4. The child protective services worker shall observe the environment where the alleged victim child lives. This requirement may be waived in complaints of child abuse

and neglect involving caretakers in state licensed and religiously exempted child care centers, regulated and unregulated family day care homes, private and public schools, group residential facilities, hospitals or institutions.

5. The child protective services worker shall observe the site where the alleged incident took place.

6. The child protective services worker shall conduct interviews with collaterals who have pertinent information relevant to the investigation and the safety of the child.

7. Pursuant to § 63.2-1505 of the Code of Virginia, local departments may obtain and consider statewide criminal history record information from the Central Criminal Records Exchange on any individual who is the subject of a child abuse and neglect investigation where there is evidence of child abuse or neglect and the local department is evaluating the safety of the home and whether removal is necessary to ensure the child's safety. The local department may also obtain a criminal record check on all adult household members residing in the home of the alleged abuser and/or neglector and where the child visits. Pursuant to § 19.2-389 of the Code of Virginia, local departments are authorized to receive criminal history information on the person who is the subject of the investigation as well as other adult members of the household for the purposes in § 63.2-1505 of the Code of Virginia. The results of the criminal record history search may be admitted into evidence if a child abuse or neglect petition is filed in connection with the child's removal. Local departments are prohibited from dissemination of this information excepted as authorized by the Code of Virginia.

22VAC40-705-120. Complete the family assessment or investigation.

A. The local department shall promptly notify the alleged abuser and/or neglector and the alleged victim's parents or guardians of any extension of the deadline for the completion of the family assessment or investigation pursuant to § 63.2-1506 B 3 or subdivision 5 of § 63.2-1505 of the Code of Virginia. The child protective services worker shall document the notifications and the reason for the need for additional time in the case record.

B. At the completion of the family assessment, the subject of the report shall be notified orally and in writing of the results of the assessment.

C. The subject of the report shall be notified immediately if during the course of completing the family assessment the situation is reassessed and determined to meet the requirements, as specified in § 63.2-1506 B of the Code of Virginia, to be investigated.

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~~D. When completing an investigation, prior to rendering a founded disposition concerning a complaint of child abuse and/or neglect, the local department shall provide an opportunity for the alleged abuser and/or neglecter to have a local consultation with the local director or his designee to hear and refute the evidence supporting a founded disposition. The subject of the report or complaint may consult with the local department to hear and refute evidence collected during the investigation.~~ Whenever a criminal charge is also filed against the alleged abuser for the same conduct involving the same victim child as investigated by the local department, sharing the evidence prior to the court hearing is prohibited.

~~1. The alleged abuser and/or neglecter shall be afforded the opportunity to informally present testimony, witnesses or documentation to representatives of the local department.~~

~~2. The local department shall consider any evidence presented by the alleged abuser and/or neglecter prior to rendering a disposition.~~

E. Local conference.

1. If the alleged abuser and/or neglecter is found to have committed abuse or neglect, that alleged abuser and/or neglecter may, within 30 days of being notified of that determination, submit a written request for an amendment of the determination and the local department's related records pursuant to § 63.2-1526 A of the Code of Virginia. The local department shall conduct an informal conference in an effort to examine the local department's disposition and reasons for it and consider additional information about the investigation and disposition presented by the alleged abuser and/or neglecter.

2. The local conference shall be conducted in accordance with 22VAC40-705-190.

22VAC40-705-140. Notification of findings.

A. Upon completion of the investigation the local child protective services worker shall make notifications as provided in this section.

B. Individual against whom allegations of abuse and/or neglect were made.

1. When the disposition is unfounded, the child protective services worker shall inform the individual against whom allegations of abuse and/or neglect were made of this finding. This notification shall be in writing with a copy to be maintained in the case record. The individual against whom allegations of abuse and/or neglect were made shall be informed that he may have access to the case record and that the case record shall be retained by the local department for one year unless requested in writing by such individual that the local department retain the record for up to an additional two years.

a. If the individual against whom allegations of abuse and/or neglect were made or the subject child is involved in subsequent complaints, the information from all complaints shall be retained until the last purge date has been reached.

b. The local worker shall notify the individual against whom allegations of abuse and/or neglect were made of the procedures set forth in § 63.2-1514 of the Code of Virginia.

c. When an unfounded investigation involves a child death, the child protective services worker shall inform the individual against whom allegations of abuse and/or neglect were made that the case record will be retained for the longer of 12 months or until the State Child Fatality Review Team has completed its review of the case pursuant to § 32.1-283.1 D of the Code of Virginia.

2. When the abuser and/or neglecter in a founded complaint is a foster parent of the victim child, the local department shall place a copy of this notification letter in the child's foster care record and in the foster home provider record.

3. No disposition of founded or unfounded shall be made in a family assessment. At the completion of the family assessment the subject of the report shall be notified orally and in writing of the results of the assessment.

C. Subject child's parents or guardian.

1. When the disposition is unfounded, the child protective services worker shall inform the parents or guardian of the subject child in writing, when they are not the individuals against whom allegations of child abuse and/or neglect were made, that the complaint involving their child was determined to be unfounded and the length of time the child's name and information about the case will be maintained. The child protective services worker shall file a copy in the case record.

2. When the disposition is founded, the child protective services worker shall inform the parents or guardian of the child in writing, when they are not the abuser and/or neglecter, that the complaint involving their child was determined to be founded and the length of time the child's name and information about the case will be retained in the Central Registry. The child protective services worker shall file a copy in the case record.

3. When the founded case of abuse or neglect does not name the parents or guardians of the child as the abuser or neglecter and when the abuse or neglect occurred in a licensed or unlicensed day care center, a regulated family day home, a private or public school, a child-caring institution or a residential facility for juveniles, the parent or guardian must be consulted and must give permission

for the child's name to be entered into the central registry pursuant to § 63.2-1515 of the Code of Virginia.

D. Complainant.

1. When an unfounded disposition is made, the child protective services worker shall notify the complainant, when known, in writing that the complaint was investigated and determined to be unfounded. The worker shall file a copy in the case record.

2. When a founded disposition is made, the child protective services worker shall notify the complainant, when known, in writing that the complaint was investigated and necessary action was taken. The local worker shall file a copy in the case record.

3. When a family assessment is completed, the child protective services worker shall notify the complainant, when known, that the complaint was assessed and necessary action taken.

E. Family Advocacy Program. When a founded disposition is made, the child protective services worker shall notify the Family Advocacy Program representative in writing as set forth in 22VAC40-720-20. When a family assessment is conducted and the family is determined to be in need of services, the child protective services worker may notify the Family Advocacy Program representative in writing as set forth in 22VAC40-720-20.

22VAC40-705-150. Services.

A. At the completion of a family assessment or investigation, the local department shall consult with the family to provide or arrange for necessary protective and rehabilitative services to be provided to the child and his family to the extent funding is available pursuant to subdivision A 2 of § 63.2-1505 or § 63.2-1506 of the Code of Virginia.

B. Families may decline services offered as a result of a family assessment or an investigation. If the family declines services, the case shall be closed unless there is an existing court order or the local department determines that sufficient cause exists due to threat of harm or actual harm to the child to redetermine the case as one that needs to be ~~investigated or~~ brought to the attention of the court. In no instance shall these actions be taken solely because the family declines services.

C. At the completion of a family assessment or investigation, local departments of social services may petition the court for services deemed necessary.

D. Protective services also includes preventive services to children about whom no formal complaint of abuse or neglect has been made, but for whom potential harm or threat of harm exists, to be consistent with §§ 16.1-251, 16.1-252, 16.1-279.1, 63.2-1503 J, and 63.2-1502 of the Code of Virginia.

E. Local departments shall support the establishment and functioning of multidisciplinary teams pursuant to § 63.2-1503 J of the Code of Virginia.

F. The local department must use reasonable diligence to locate any child for whom a founded disposition of abuse or neglect has been made and/or a child protective services case has been opened pursuant to § 63.2-1503 F of the Code of Virginia. The local department shall document its attempts to locate the child and family.

G. When an abused or neglected child and persons who are the subject of an open child abuse services case have relocated out of the jurisdiction of the local department, the local department shall notify the child protective services agency in the jurisdiction to which such persons have relocated, whether inside or outside of the Commonwealth of Virginia, and forward to such agency relevant portions of the case records pursuant to § 63.2-1503 G of the Code of Virginia.

H. The receiving local department shall arrange necessary protective and rehabilitative services pursuant to § 63.2-1503 G of the Code of Virginia.

22VAC40-705-180. Training.

A. The department shall implement a uniform training plan for child protective services workers and supervisors. The plan shall establish minimum standards for all child protective services workers and supervisors in the Commonwealth of Virginia.

B. Workers shall complete skills and policy training specific to child abuse and neglect investigations and family assessments within the first ~~year~~ two years of their employment.

VA.R. Doc. No. R07-215; Filed January 14, 2009; 8:05 a.m.



TITLE 23. TAXATION

DEPARTMENT OF TAXATION

REGISTRAR'S NOTICE: The Department of Taxation is claiming an exemption from the Administrative Process Act in accordance with (i) § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors and (ii) § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Taxation will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

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Final Regulation

Title of Regulation: **23VAC10-20. General Provisions Applicable to All Taxes Administered by the Department of Taxation (amending 23VAC10-20-20, 23VAC10-20-80, 23VAC10-20-90, 23VAC10-20-110, 23VAC10-20-130, 23VAC10-20-200).**

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

Effective Date: March 4, 2009.

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.

Summary:

This regulatory action amends 23VAC10-20-130, Memorandum of lien for collection of taxes, to reflect statutory changes. Chapter 384 of the 1993 Acts of Assembly required the taxpayer to be given 10 days notice before a memorandum of lien can be issued unless the lien is filed in instances where the commissioner determines the collection to be in jeopardy. Chapter 384 also required that notice be given at a taxpayer's "last known address" and defined the term. Chapter 800 of the 1994 Acts of Assembly allowed TAX to deposit any payment submitted with an offer in compromise unless directed otherwise by the taxpayer. Chapter 634 of the 1996 Acts of Assembly allowed the taxpayer to appeal to the commissioner if the taxpayer alleges an error in the filing of the lien.

In addition, this action conforms the regulation to the Form, Style, and Procedure Manual for Publication of Virginia Regulations.

23VAC10-20-20. Filing of tax returns and payment of taxes which fall due on Saturday, Sunday or legal holiday.

A. Definitions. The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise:

"Legal holiday" means any day designated as such by § 2.2-3300 of the Code of Virginia.

"Business day" means any Monday, Tuesday, Wednesday, Thursday, or Friday that is not a legal holiday.

B. Generally. When the last day prescribed by law for filing a return or paying a tax falls on a Saturday, Sunday or legal holiday, then the return may be filed or the payment may be made without penalty or interest on the next succeeding business day. If an extension has been obtained, and the last day of the extension falls on a Saturday, Sunday or legal holiday the return may be filed or the payment may be made without penalty on the next succeeding business day.

B. Definitions.

1. Legal holiday. "Legal holidays" shall be those defined in Va. Code § 2.1-21.

2. Business day. A "business day" means a Monday, Tuesday, Wednesday, Thursday, or Friday which is not a legal holiday.

23VAC10-20-80. Waiver of time limitation on assessment of taxes.

A. Assessments. The Tax Commissioner and a taxpayer may agree to extend the period for assessing a tax prescribed by ~~Va. Code~~ §§ 58.1-104 (period of limitations in general), 58.1-312 (relating to income tax only), 58.1-634 (relating to retail sales and use tax only) and 58.1-1812 (assessment of omitted taxes) of the Code of Virginia. Such agreements shall be in writing, on forms prescribed by the Tax Commissioner, and shall extend the period for assessing a tax for all issues relevant to the tax and taxable period for which the agreement is executed.

B. Refunds. Any such agreement will also extend the period for filing an amended return claiming a refund. See ~~also 23VAC10-20-190 relating to~~ for information regarding protective claims.

23VAC10-20-90. Retention of records by taxpayer.

A. ~~In general~~ Generally. Every taxpayer must retain suitable records and documents substantiating all information contained on any return for any tax administered by the ~~Department~~ department. Such records and documents shall be preserved for a period of three years from the required date for filing a return to which such records or documents pertain. If an extension of the date for filing a return has been granted such records and documents shall be preserved for a period of three years from the extended date.

B. Net operating loss deductions. When an income tax return contains a net operating loss deduction, the records and documents pertinent to such return shall include:

1. ~~the~~ The return for the year of the loss with supporting records and documents, and

2. ~~the~~ The returns for all years to which any portion of the loss has been or could have been carried under federal law together with the supporting records and documents for such returns.

23VAC10-20-110. Offers in compromise.

A. ~~In general~~ Generally.

1. The Tax Commissioner has the authority to accept an offer in compromise of a penalty, or to abate a penalty in its entirety, if he determines that such action is justified. An offer in compromise is considered accepted only when the taxpayer is notified in writing by the Tax Commissioner.

2. The Tax Commissioner has the authority to accept an offer in compromise of taxes if he determines that the

assessment is based upon a doubtful and disputed claim or that the tax liability is of doubtful collectibility.

B. Form of submission. An offer in compromise shall be submitted in the form of a letter addressed to the Tax Commissioner, ~~Virginia Department of Taxation, P.O. Box 1880, Richmond, Virginia 23282-1880. See the department's website, www.tax.virginia.gov, for contact information and the mailing address for the commissioner.~~ The letter should state that it is an offer in compromise and identify the taxpayer, type of tax involved, taxable period, date and amount of the assessment and contain a complete statement of the reasons for acceptance of the offer. A check payable to the Department of Taxation in the amount of the offer may be attached to the letter in addition to any supporting documents. In the case of an offer in compromise based upon doubtful collectibility, the taxpayer shall submit signed financial statements in sufficient detail to indicate the financial condition of the taxpayer.

C. The Department of Taxation may deposit any payments submitted with offers in compromise into the state treasury unless the taxpayer specifically and clearly directs otherwise.

23VAC10-20-130. Memorandum of lien for collection of taxes.

~~1. If an~~ A. The Tax Commissioner may file a memorandum of lien in the circuit court clerk's office of the county or city in which the taxpayer's place of business is located, or in which the taxpayer resides, if:

1. An assessment of any tax, fees, penalty or interest remains unpaid ~~thirty~~ 30 days after the assessment, or if there has been an immediate assessment of income or sales tax where collection would be jeopardized by delay pursuant to Va. Code §§ 58.1-313 (relating to income tax) or 58.1-631 (relating to sales tax), the Tax Commissioner may file a memorandum of lien in the circuit court clerk's office of the county or city in which the taxpayer's place of business is located, or in which the taxpayer resides; or

2. There has been an immediate assessment of income or sales tax where collection would be jeopardized by delay pursuant to § 58.1-313 (relating to income tax) or 58.1-631 (relating to sales tax) of the Code of Virginia.

B. No memorandum of lien shall be filed unless the taxpayer is first given 10 or more days' prior notice of intent to file a lien. Notice shall be given to the taxpayer at his last known address. For purposes of this section, "last known address" refers to the address shown on the most recent return filed by or on behalf of the taxpayer or the address provided in correspondence by or on behalf of the taxpayer indicating that it is a change of the taxpayer's address.

C. If the taxpayer has no place of business or residence within Virginia, such memorandum may be filed in the clerk's office of the ~~Circuit Court~~ circuit court of the City of

Richmond. A copy of such memorandum may also be filed in the circuit court clerk's office of all counties in which the taxpayer owns real estate.

~~2. D.~~ The recordation of a memorandum of lien shall not prevent a taxpayer from seeking refund or exoneration under Va. Code §§ § 58.1-1821 (application to Tax Commissioner), 58.1-1823 (amended return claiming a refund), 58.1-1824 (protective claim) or 58.1-1825 (application to Court) of the Code of Virginia.

E. A taxpayer may appeal to the Tax Commissioner after a memorandum of lien has been filed under this section if the taxpayer alleges an error in the filing of the lien. The Tax Commissioner shall make a determination of such an appeal within 14 days. If the Tax Commissioner determines that the filing was erroneous, he shall issue a certificate of release of the lien within seven days after such determination is made.

23VAC10-20-200. Interest on overpayments or improper collection.

~~A. In general~~ Generally. Interest will be allowed and paid upon the overpayment of any tax administered by the department, the refund of which is either permitted or required under ~~Title 58.1, Chapter 18, Article 2~~ Article 2 (§ 58.1-1820 et seq.) of Chapter 18 of Title 58.1 of the Code of Virginia, at a rate equal to the rate of interest established pursuant to ~~Va. Code § 58.1-15 of the Code of Virginia.~~ Such interest will accrue from a date 60 days after the date of the payment of the tax, except as set forth below, to a date determined by the Department of Taxation, which will not be more than 30 days prior to the date of the refund check.

B. Income tax. Refunds appearing on the face of an income tax return will accrue interest from a date 60 days after the due date for filing the return or the date on which such return was filed, whichever is later. Refunds resulting from payments of estimated tax or withholding tax can only be claimed on the face of the income tax return to which such payments apply.

C. Erroneous assessment.

1. Refunds pursuant to an erroneous assessment accrue interest from the date the assessment was paid.

2. If the assessment is a self assessment paid upon filing a return, the date the assessment is paid is the date the return is filed and the tax paid or the last day prescribed by law for filing the return, whichever is later.

3. If the assessment is a written assessment made pursuant to notice by the department, the date the assessment is paid is the date the department receives payment.

4. A refund is the result of an erroneous assessment if the refund is pursuant to an application for correction of an erroneous assessment or improper collection under § 58.1-1821 of the Code of Virginia, an amended return under

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§ 58.1-1823 of the Code of Virginia, a protective claim under § 58.1-1824 of the Code of Virginia or an application to a court for correction of an erroneous assessment or improper collection under § 58.1-1825 of the Code of Virginia.

D. Sales tax. No interest will be paid on sales taxes refunded to a dealer unless the dealer agrees to pass such interest on to the purchaser. (See ~~23VAC10-20-160 C 2 for procedure.~~) See 23VAC10-20-180 A 2 for more information.

E. Net operating loss. Any overpayment of tax resulting from the carryback of a net operating loss or net capital loss will be deemed to have been made on the day on which the return for the year in which the loss occurred was filed, or the last day prescribed by law for such filing, whichever is later.

VA.R. Doc. No. R09-1735; Filed January 12, 2009, 10:25 a.m.

Final Regulation

Title of Regulation: **23VAC10-210. Retail Sales and Use Tax (amending 23VAC10-210-220, 23VAC10-210-250, 23VAC10-210-3080).**

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

Effective Date: March 4, 2009.

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.

Summary:

The amendments reflect the 2004 retail sales and use tax rate increase and conform the regulations to the Form, Style, and Procedure Manual for Publication of Virginia Regulations.

23VAC10-210-220. Brackets for collection of the tax.

A. The rate of the sales and use tax is ~~4.5%~~ 5.0%, which is comprised of a ~~3.5%~~ 4.0% state tax and a 1.0% local tax applicable throughout Virginia. (See 23VAC10-210-6040 through 23VAC10-210-6043 for special tax rate and provisions applicable to sales through vending machines.) The bracket system is used to eliminate fractions of \$.01 and must be used to compute the tax on transactions of \$5.00 or less. On transactions over \$5.00, the tax is computed at a straight ~~4.5%~~ 5.0%, with one half cent or more treated as \$.01. Any dealer who collects the tax in accordance with the bracket system set forth herein shall not be deemed to have ~~overcollected~~ over collected the tax. (~~For overcollection~~ For over collection of the tax generally, see 23VAC10-210-340 ~~D.~~ D.)

B. The bracket system does not relieve the dealer from the liability to pay an amount equal to ~~4.5%~~ 5.0% of his gross taxable sales. However, ~~there is one exception.~~ If the dealer can prove to the department that more than 85% of the gross

taxable sales for the period ~~was~~ were from individual sales of \$.10 or less (and that he ~~was~~ was unable to adjust his prices ~~to avoid the situation~~) in such manner as to prevent the economic incidence of the sales tax from falling on him), the department will determine the proper tax liability of the dealer based on the portion of gross taxable sales that came from sales of \$.11 or more. Any dealer who may claim this exception must file with each return a separate statement explaining his claim in detail for consideration by the department.

C. Below is the bracket system for the combined state and local tax of ~~4.5%~~ 5.0% on transactions of \$5.00 or less:

\$0.00 to \$0.11	no tax
0.12 to 0.33	\$.01 tax
0.34 to 0.55	\$.02 tax
0.56 to 0.77	\$.03 tax
0.78 to 0.99	\$.04 tax
1.00 to 1.22	\$.05 tax
1.23 to 1.44	\$.06 tax
1.45 to 1.66	\$.07 tax
1.67 to 1.88	\$.08 tax
1.89 to 2.11	\$.09 tax
2.12 to 2.33	\$.10 tax
2.34 to 2.55	\$.11 tax
2.56 to 2.77	\$.12 tax
2.78 to 2.99	\$.13 tax
3.00 to 3.22	\$.14 tax
3.23 to 3.44	\$.15 tax
3.45 to 3.66	\$.16 tax
3.67 to 3.88	\$.17 tax
3.89 to 4.11	\$.18 tax
4.12 to 4.33	\$.19 tax
4.34 to 4.55	\$.20 tax
4.56 to 4.77	\$.21 tax
4.78 to 4.99	\$.22 tax
5.00	\$.23 tax

<u>Sales Price</u>	<u>Tax Due</u>
<u>0.01 to 0.09</u>	<u>0</u>
<u>0.10 to 0.29</u>	<u>0.01</u>
<u>0.30 to 0.49</u>	<u>0.02</u>
<u>0.50 to 0.69</u>	<u>0.03</u>
<u>0.70 to 0.89</u>	<u>0.04</u>
<u>0.90 to 1.09</u>	<u>0.05</u>
<u>1.10 to 1.29</u>	<u>0.06</u>
<u>1.30 to 1.49</u>	<u>0.07</u>
<u>1.50 to 1.69</u>	<u>0.08</u>
<u>1.70 to 1.89</u>	<u>0.09</u>
<u>1.90 to 2.09</u>	<u>0.1</u>
<u>2.10 to 2.29</u>	<u>0.11</u>
<u>2.30 to 2.49</u>	<u>0.12</u>
<u>2.50 to 2.69</u>	<u>0.13</u>
<u>2.70 to 2.89</u>	<u>0.14</u>

<u>2.90 to 3.09</u>	<u>0.15</u>
<u>3.10 to 3.29</u>	<u>0.16</u>
<u>3.30 to 3.49</u>	<u>0.17</u>
<u>3.50 to 3.69</u>	<u>0.18</u>
<u>3.70 to 3.89</u>	<u>0.19</u>
<u>3.90 to 4.09</u>	<u>0.2</u>
<u>4.10 to 4.29</u>	<u>0.21</u>
<u>4.30 to 4.49</u>	<u>0.22</u>
<u>4.50 to 4.69</u>	<u>0.23</u>
<u>4.70 to 4.89</u>	<u>0.24</u>
<u>4.90 to 5.00</u>	<u>0.25</u>

For differential rate on fuels for domestic consumption, see 23VAC10-210-630.

23VAC10-210-250. Cash and trade discounts.

A. The following words and terms, when used in this regulation, section shall have the following meanings, unless the content clearly indicates otherwise:

"Cash or trade discount" includes a discount for the early payment of the purchase price, a discount attributable to the value of an item taken in trade, or a discount based upon the method of payment.

B. Cash and trade discounts taken on sales are not includible in the sales price for purposes of computing the tax. The amount of such discounts may be deducted from gross sales provided the discounts have been included in gross sales.

C. In computing the amount of a discount which that may be subtracted from gross sales, the discount must be allocated between sales price and sales tax. The following examples illustrate the application of this concept.

Example 1: Dealer A sells an item to a customer for \$100 and bills the customer \$100 for the item and ~~\$4.50~~ \$5.00 for the tax. The terms of the sale provide for a 10% discount if the bill is paid within 30 days. The customer pays within 20 days and is therefore entitled to the discount, which is computed as follows:

Amount Billed	\$104.50 <u>\$105.00</u>
Sales Price	100.00 <u>\$100.00</u>
Tax	4.50 <u>\$5.00</u>
Less 10% Discount	<u>\$10.00 discount</u>
Sales price <u>discount</u>	100.00 x 10% = 10.00
Tax <u>discount</u>	4.50 x 10% = .45 <u>5.0 x 10% = \$0.50</u>

Therefore, the customer remits ~~\$94.05~~ \$94.50, which includes \$90 in sales price and ~~\$4.05~~ \$4.50 in sales tax. Dealer A may deduct \$10.00 from gross sales, and will accordingly remit only ~~\$4.05~~ \$4.50 in tax.

Example 2: Dealer B sells an item to a customer for \$100 and bills the customer \$100 for the item and ~~\$4.50~~ \$5.00 for the tax. The terms of the sale provide for a \$10 discount if the bill is paid within 30 days. The customer pays within 20 days and is therefore entitled to the discount, which is computed as follows:

Amount Billed	\$104.50 <u>\$105.00</u>
Sales Price	100.00 <u>\$100.00</u>
Tax	4.50 <u>\$5.00</u>
Less \$10.00 Discount	<u>\$10.00 discount</u>
	\$10.00 / 1.045 = 9.57 <u>\$1.05</u> =
	<u>\$9.52</u> sales price discount
	.43 <u>\$0.48</u> tax discount

Therefore, the customer remits ~~\$94.50~~ \$95.00, which includes ~~\$90.43~~ \$90.48 in sales price and ~~\$4.07~~ \$4.52 in sales tax. Dealer B may deduct ~~\$9.57~~ \$9.52 from gross sales, and will accordingly remit only ~~\$4.07~~ \$4.52 in tax.

Example 3: Dealer B repairs a piece of equipment for a customer and bills the customer \$100 for parts, \$50 for labor, and ~~\$4.50~~ \$5.00 for tax. The terms of the sale provide for a \$10 discount if the bill is paid within 30 days. B pays within 20 days and earns the discount which is computed as follows:

Amount Billed	\$154.50 <u>\$155.00</u>
Sales Price of Parts	100.00 <u>\$100.00</u>
Separately Stated Repair Labor (nontaxable)	50.00 <u>\$50.00</u>
Sales tax	4.50 <u>\$5.00</u>
Less \$10.00 discount attributed as follows:	
	Attributable to Parts: (100 / \$150) x \$10.00 = <u>\$6.67</u>
	\$6.67 / 1.045 <u>1.05</u> = \$6.38 <u>\$6.35</u> sales price discount
	.29 <u>\$0.32</u> sales tax reduction
	\$3.33 attributable to nontaxable labor

Therefore, the customer remits ~~\$144.50~~ \$145.00, which includes ~~\$93.62~~ \$93.65 in sales price for the parts, ~~\$4.21~~ \$4.68 in sales tax attributable to the parts, and \$46.67 for nontaxable labor. Dealer B may deduct ~~\$6.38~~ \$6.35 from gross sales and will accordingly remit only ~~\$4.21~~ \$4.68 in tax.

Regardless of whether a cash or percentage discount is used, the discount must be allocated between the sales price and the tax to avoid overcollection of the tax.

23VAC10-210-3080. Returned goods.

A. Generally, A dealer may deduct from gross sales any portion of the sales price of tangible personal property returned by a customer provided that such amount has been

Regulations

refunded to or credited to the account of the purchaser. Adequate records must be kept to disclose the essential facts.

B. Returns before tax paid by dealer. If a dealer refunds or credits to a customer's account all or any portion of the sales price of returned goods and has not yet paid the sales tax to the department, such portion of the sales price may be deducted from gross sales by the dealer in the appropriate place on his return for the period.

~~For example, in Example 1.~~ Customer A purchases a sweater from Dealer B for \$20.00 and pays to B the appropriate ~~\$1.00~~ \$1.00 sales tax. A returns the sweater the same day and B refunds ~~\$20.80~~ \$21.00. If the sale was included in gross sales for the month, B may deduct the \$20.00 sales price of the sweater.

C. Returns after tax paid by dealer. If a dealer refunds or credits to a customer's account all or any portion of the sales price of returned goods after the dealer has paid the tax on the goods to the department, such portion may be deducted from gross sales on the dealer's return for the period in which the refund was made or credit given.

~~For example, in Example 2.~~ In December Customer C purchases a bed from Dealer D for \$700 and pays the ~~\$28~~ \$35 tax. C returns the bed to D in January and D credits C's account for ~~\$728~~ \$735. In reporting gross sales for January, D may deduct the \$700 sales price of the bed reported in a previous month.

D. Refund or credit for returned goods. If a dealer as described in subsection C ~~above of this section~~ has insufficient gross sales during the period in which goods are returned or a refund/credit issued to absorb the amount of the sales price of the returned goods, the dealer may carry the deduction forward as a credit against gross sales until used. If any portion of such credit has not been used by the time a dealer ceases business or if a dealer is no longer engaged in making retail sales, he may request a refund for any portion of the unused credit for returned goods. The amount of refund will be the net amount of tax remitted, therefore, if a dealer deducted dealer's discount in filing his original return, such discount shall similarly be deducted from the amount to be refunded. The following example illustrates this concept.

Example: Customer E purchases equipment from Dealer G in January for \$10,000 and pays the ~~\$400~~ \$500 sales tax. The transaction is reported on G's January sales tax return which is filed timely. E returns the equipment in April and G refunds to E \$8,000 of the sales price and the applicable tax of ~~\$320~~ \$400. G's gross sales for April are only \$5,000, therefore, only \$5,000 of the amount refunded may be used as a credit. G goes out of business on April 30 and applies for refund of the tax attributable to the remaining \$3,000 of sales price which was refunded. G will be issued a refund of ~~\$117.30~~ \$146.40 computed as follows:

(Sales Price X ~~4%~~ 5.0% tax) - dealer's discount = Refund
(\$3,000 X ~~4%~~ 5.0% tax) - (~~3%~~ 4.0% X \$90) = ~~\$117.30~~
\$146.40

E. Sales of returned goods. When any returned tangible personal property is resold, the sale is subject to the sales tax.

VA.R. Doc. No. R09-1734; Filed January 12, 2009, 10:25 a.m.

GOVERNOR

EXECUTIVE ORDER NUMBER 80 (2009)

DECLARATION OF A STATE OF EMERGENCY TO SUPPORT THE 56th PRESIDENTIAL INAUGURATION

The Presidential Inaugural Committee estimates the visitor attendance between 1.5 and 4 million. Projections for attendance are far above any past Presidential Inaugural. Emergency Management officials expect this to be the most complex and difficult Inaugural in history. The mass of attendees expected into the National Capital Region will challenge fire, law enforcement, emergency medical and mass transit capabilities.

Supporting the Inauguration and related activities requires the Commonwealth's full attention and preparation. A number of plausible challenges may emerge that create requirements that significantly exceed the Commonwealth's capacity to respond. The high volume of buses/traffic, weather factors and other threats will further impact support to and from all jurisdictions. Additionally, Virginia must also be prepared to implement the Northern Virginia Evacuation Plan and support a Federal Continuity of Operations Plan operation if necessary.

Therefore, the purpose of this order is to declare a state of emergency to exist for the Commonwealth in order to provide state agencies the greatest possible ability to prepare for and respond to the unusually high-risk environment and associated threat risk that will be generated by the 56th Presidential Inauguration. In accordance with § 44-146.28:1, the Commonwealth of Virginia, local jurisdictions in the National Capital Region and local jurisdictions throughout the Commonwealth will provide resources and assistance to the fullest extent possible associated with the comprehensive emergency actions generated in support of the 56th Presidential Inauguration during the National Special Security Event period of January 17, 2009 through January 21, 2009.

By virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by § 44-75.1 of the Code of Virginia, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby proclaim that a state of emergency exists and direct that appropriate assistance be rendered by agencies of the state government to respond to needs of the District of Columbia and the National Capital Region and surrounding areas to alleviate adverse conditions created by events. Pursuant to § 44-75.1 A 3 and A 4 of the Code of Virginia, I direct the Virginia National Guard be called forth to state duty to assist in providing such aid. This shall include such functions as the State Coordinator of Emergency

Management, the Adjutant General, and the Secretary of Public Safety, may find necessary.

In order to marshal all public resources and appropriate preparedness, response and recovery measures to meet this potential threat and recover from its effects, and in accordance with my authority contained in § 44-146.17 of the Emergency Services and Disaster Laws, I hereby order the following measures:

A. The implementation by agencies of the state and local governments of the Commonwealth of Virginia Emergency Operations Plan (COVEOP), as amended along with other appropriate state agency plans.

B. Activation of the Virginia Emergency Operations Center (VEOC) and Virginia Emergency Response Team (VERT) to coordinate the provision of assistance to the District of Columbia and National Capital Region. I am directing that the VEOC and VERT coordinate state operations in support of the EMAC agreement, other mission assignments to agencies designated in the Commonwealth of Virginia Emergency Operations Plan (COVEOP) and other measures that may be identified by the State Coordinator of Emergency Management, in consultation with the Secretary of Public Safety, which are needed to provide assistance for the preservation of life, protection of property, and implementation of recovery activities.

C. The activation, implementation and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact (EMAC), and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to §§ 44-146.17(5) and 44-146.28:1 of the Code of Virginia to provide for the exchange of medical, fire, police, National Guard personnel and equipment, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies. The State Coordinator of Emergency Management is hereby designated as Virginia's authorized representative within the meaning of the Emergency Management Assistance Compact, § 44-146.28:1 of the Code of Virginia.

D. The authorization of the Departments of State Police, Transportation and Motor Vehicles to grant temporary overweight, over width, registration, or license exemptions to all carriers transporting essential commodities in and through any area of the Commonwealth in order to support the emergency conditions, regardless of their point of origin or destination.

The axle and gross weights shown below are the maximum allowed, unless otherwise posted.

Governor

Any One Axle	24,000 Pounds
Tandem Axles (more than 40 inches but not more than 96 inches spacing between axle centers)	44,000 Pounds
Single Unit (2 Axles)	44,000 Pounds
Single Unit (3 Axles)	54,500 Pounds
Tractor-Semi trailer (4 Axles)	64,500 Pounds
Tractor-Semi trailer (5 or more Axles)	90,000 Pounds
Tractor-Twin Trailers (5 or more Axles)	90,000 Pounds
Other Combinations (5 or more Axles)	90,000 Pounds
Per Inch of Tire Width in Contact with Road Surface	850 Pounds

All over width loads, up to a maximum of 12 feet, must follow Virginia Department of Motor Vehicles (VDMV) hauling permit and safety guidelines.

In addition to described overweight/over width transportation privileges, carriers are also exempt from registration with the Department of Motor Vehicles. This includes the vehicles enroute and returning to their home base. The above-cited agencies shall communicate this information to all staff responsible for permit issuance and truck legalization enforcement.

This authorization shall apply to hours worked by any carrier when transporting passengers, property, equipment, food, fuel, construction materials and other critical supplies to or from any portion of the Commonwealth for purpose of providing relief or assistance as a result of this disaster, pursuant to § 52-8.4 of the Code of Virginia.

The foregoing overweight/over width transportation privileges as well as the regulatory exemption provided by § 52-8.4 A of the Code of Virginia, and implemented in 19VAC30-20-40 B of the "Motor Carrier Safety Regulations," shall remain in effect for 30 days from the onset of the disaster, or until emergency relief is no longer necessary, as determined by the Secretary of Public Safety in consultation with the Secretary of Transportation, whichever is earlier.

E. The discontinuance of provisions authorized in paragraph D above may be implemented and disseminated by publication of administrative notice to all affected and interested parties by the authority I hereby delegate to the Secretary of Public Safety, after consultation with other affected Cabinet-level Secretaries.

F. A vehicle operated as a Virginia Department of Transportation Safety Service Patrol, while en route to an emergency, traffic incident, or other congestion management issue and with due regard to the safety of persons and property, may overtake and pass stopped or slow-moving vehicles by going off the paved or main traveled portion of the highway on the right or on the left. This temporary authority shall be limited to the time period beginning 11:59 p.m. January 16, 2009, and ending 12 p.m. January 23, 2009,

and shall apply only to Interstates 66, 95, 395, and 495 in the established VDOT Northern Virginia and Fredericksburg Districts.

G. This state of emergency constitutes a major medical emergency under the Rules and Regulations of the Board of Health Governing Emergency Medical Services, pursuant to Article 3.01 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1, of the Code of Virginia, Statewide Emergency Medical Services System and Services, and exemptions specified in the Rules and Regulations regarding patient transport and provider certification in disasters apply.

H. The implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP without regard to normal procedures pertaining to performance of public work, entering into contracts, incurring of obligations, or other logistical and support measures of the Emergency Services and Disaster Laws, as provided in § 44-146.28 (b) of the Code of Virginia. Section 44-146.24 of the Code of Virginia also applies to the disaster activities of state agencies.

I. Designation of members and personnel of volunteer, auxiliary and reserve groups including search and rescue (SAR), Virginia Associations of Volunteer Rescue Squads (VAVRS), Civil Air Patrol (CAP), member organizations of the Voluntary Organizations Active in Disaster (VOAD), Radio Amateur Civil Emergency Services (RACES), volunteer fire fighters, Medical Reserve Corps (MRC), Citizen Emergency Response Teams (CERT) and others identified and tasked by the State Coordinator of Emergency Management for specific disaster-related mission assignments as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of § 44-146.23 (a) of the Code of Virginia, in the performance of their specific disaster-related mission assignments.

K. I hereby authorize the Superintendent of Public Instruction to issue such guidance to local school divisions as may be necessary to facilitate enrollment of students displaced by events related to possible evacuation needs within the District of Columbia.

L. The temporary waiver, for a period of 90 days, of the enforcement by the Board of Pharmacy of statutory and regulatory provisions which, in the judgment of the Director of the Department of Health Professions, impede the ability of Virginia pharmacies to provide assistance to patients who have been displaced.

M. The following conditions apply to the deployment of the Virginia National Guard:

1. The Adjutant General of Virginia, after consultation with the State Coordinator of Emergency Management, shall make available on state active duty such units and members of the Virginia National Guard and such equipment as may

be necessary or desirable to assist in alleviating the human suffering and damage to property.

2. Pursuant to § 52-6 of the Code of Virginia, I authorize and direct the Superintendent of State Police to appoint any and all such Virginia Army and Air National Guard personnel called to state active duty as additional police officers as deemed necessary. These police officers shall have the same powers and perform the same duties as the regular State Police officers appointed by the Superintendent. However, they shall nevertheless remain members of the Virginia National Guard, subject to military command as members of the State Militia. Any bonds and/or insurance required by § 52-7 of the Code of Virginia shall be provided for them at the expense of the Commonwealth.

3. In all instances, members of the Virginia National Guard shall remain subject to military command as prescribed by § 44-78.1 of the Code of Virginia and not subject to the civilian authorities of county or municipal governments. This shall not be deemed to prohibit working in close cooperation with members of the Virginia Departments of State Police or Emergency Management or local law enforcement or emergency management authorities or receiving guidance from them in the performance of their duties.

4. Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following will be provided to the member and the member's dependents or survivors:

(a) Workers Compensation benefits provided to members of the National Guard by the Virginia Workers Compensation Act, subject to the requirements and limitations thereof; and, in addition,

(b) The same benefits, or their equivalent, for injury, disability and/or death, as would be provided by the federal government if the member were serving on federal active duty at the time of the injury or death. Any such federal-type benefits due to a member and his or her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers Compensation Act during the same month. If and when the time period for payment of Workers Compensation benefits has elapsed, the member and his or her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to § 44-14 of the Code of Virginia, and subject to the availability of future appropriations which may be lawfully applied to this

purpose, I now approve of future expenditures out of appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

5. The costs incurred by the Department of Military Affairs in performing these missions shall be paid from state funds.

N. The activation of the statutory provisions in § 59.1-525 et seq. of the Code of Virginia related to price gouging. Price gouging at any time is unacceptable. Price gouging is even more reprehensible after a disaster. I have directed all applicable executive branch agencies to take immediate action to address any verified reports of price gouging of necessary goods or services. I make the same request of the Office of Attorney General and appropriate local officials.

O. I hereby authorize the heads of executive branch agencies, acting when appropriate on behalf of their regulatory boards, to waive any state requirement or regulation for which the federal government has issued a waiver of the corresponding federal or state regulation based on the impact of events related to this situation.

P. I hereby authorize the presidents of colleges and universities in the Commonwealth to waive the requirements of any state law or regulation for good cause to facilitate enrollment of students displaced by events related to this situation.

Q. A state of emergency exists for the Commonwealth in support of the proper management, care and support of persons who may need medical care at facilities impacted by events related to the Inauguration, including an influx of large numbers of displaced persons. I hereby order the following measures:

1. Designation of physicians, nurses, and other licensed and nonlicensed health care providers and other individuals as well as hospitals, nursing facilities and other licensed and nonlicensed health care organizations and other private entities by agencies of the Commonwealth, including but not limited to the Department of Health, Department of Mental Health, Mental Retardation and Substance Abuse Services, Department of Emergency Management, Department of Transportation, Department of State Police, Department of Motor Vehicles, and Department of Social Services, as representatives of the Commonwealth engaged in emergency services activities, at sites designated by the Commonwealth, within the meaning of the immunity provisions of § 44-146.23 (a) of the Code of Virginia, in the performance of their disaster-related mission assignments.

2. It may be necessary to authorize persons not normally authorized by law to administer or dispense necessary drugs and devices for the prophylaxis or treatment of the Commonwealth's population pursuant to Article 3 (§ 32.1-42.1) of Chapter 2 of Title 32.1. The Commissioner of

Governor

Health shall determine the necessity for administration and dispensing of drugs and devices by persons not normally authorized to do so.

3. The temporary waiver, for a period of 90 days, of the enforcement by the Board of Health Professions of statutory and regulatory provisions which, in the judgment of the Commissioner of Health, impede the ability of Virginia healthcare providers to provide assistance to patients to the extent that events related to the Inauguration, including large numbers of displaced persons, create barriers to care.

R. Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC of the Commonwealth as defined herein and in § 44-146.24 of the Code of Virginia, other than costs defined in Item 5 of the paragraphs above pertaining to the Virginia National Guard, in performing these missions shall be paid from state funds and/or Federal funds. In addition, up to \$100,000 shall be made available for state response and recovery operations and incident documentation with the Department of Planning and Budget overseeing the release of these funds.

This Executive Order shall be effective January 13, 2009, and shall remain in full force and effect until June 30, 2010, unless sooner amended or rescinded by further executive order.

Termination of the Executive Order is not intended to terminate any Federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 13th day of January 2009.

/s/ Timothy M. Kaine
Governor

GENERAL NOTICES/ERRATA

AIR POLLUTION CONTROL BOARD

State Implementation Plan Revision

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed plan to attain and maintain the national ambient air quality standard for particulate matter in the Northeastern Virginia Intrastate Air Quality Control Region. If adopted, the Commonwealth intends to submit the plan as a revision to the Commonwealth of Virginia State Implementation Plan (SIP) in accordance with the requirements of § 110(a) of the federal Clean Air Act. The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act.

Purpose of notice: DEQ is seeking comments on the overall plan.

Public comment period: January 12, 2009, to February 12, 2009.

Public hearing: A public hearing will be conducted if a request is made in writing to the contact listed below. In order to be considered, the request must include the full name, address and telephone number of the person requesting the hearing and be received by DEQ by 5 p.m. on the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Background: On September 30, 2002, the State Air Pollution Control Board adopted an opacity variance (9VAC5 Chapter 220) for the rocket motor test operations at Atlantic Research Corporation's Orange County facility located at 7499 Pine Stake Road, Culpeper VA 22701 (Registration No. 4074) from the standard for visible emissions in 9VAC5-50-80. In lieu of compliance with this standard, the variance required the facility to limit total particulate matter emissions from its rocket motor test operations to 714 pounds per hour. Subsequently, the facility was purchased by Aerojet Corporation. This variance was submitted to EPA as a revision to the Virginia SIP on January 26, 2004.

Description of proposal: The January 2004 SIP submittal contained a technical support document (TSD) that provided a basis for proposed hourly limit for particulate matter emissions from the rocket motor testing operations. In conducting its administrative and technical review of the submittal, EPA determined that the technical support document did not provide adequate air dispersion modeling information. On April 20, 2005, the company provided a more comprehensive TSD, "Technical Support Documentation for Opacity Variance for Rocket Test Facility."

This TSD was reviewed by EPA, which provided a number of questions and comments. One of the comments was that the OB/OD Model software program used to estimate the PM emissions from the rocket motor testing operations is not an EPA-approved model. On May 5, 2008, DEQ requested EPA approval of an alternative air quality model for analyzing air quality in support of the variance. EPA approved this request on July 24, 2008. On August 29, 2008, the company provided responses to the remaining EPA comments. These documents make up the proposed revision to the SIP. The documents have been reviewed by DEQ, and DEQ agrees with the company's modeling procedures and results.

The TSD includes references to the PM10 annual NAAQS. All references to the annual PM10 NAAQS should be disregarded due to the fact that EPA revoked this standard on December 18, 2006.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period. All testimony, exhibits and documents received are part of the public record. Please note this proposed plan is being concurrently reviewed by the U. S. Environmental Protection Agency.

To review proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website

(<http://www.deq.virginia.gov/air/permitting/planotes.html>).

The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations: 1) Main Street Office, 8th Floor, 629 E. Main St, Richmond VA, (804) 698-4070 and 2) Charlottesville Office, 900 Natural Resources Dr, Suite 600, Charlottesville VA, (434) 293-1020. Note that the modeling data in support of this plan is extensive, and available only in electronic format. An electronic copy of the modeling data is available on request.

Contact Information: Doug Stockman, Environmental Engineer Senior, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3800, FAX (703) 583-3821, or email rdstockman@deq.virginia.gov.

General Notices/Errata

STATE CORPORATION COMMISSION

AT RICHMOND, DECEMBER 23, 2008

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE-2008-00099

Concerning Electric Utility Integrated
Resource Planning Pursuant
to §§ 56-597 et seq. Code of Virginia

ORDER ESTABLISHING GUIDELINES FOR DEVELOPING INTEGRATED RESOURCE PLANS

Pursuant to §§ 56-597 et seq. of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") issued an Order Proposing Guidelines and Directing the Filing of Integrated Resource Plans on November 12, 2008 ("November 12 Order"). The November 12 Order, inter alia, directed each investor-owned electric utility to develop and file an integrated resource plan ("IRP") by September 1, 2009 and, pursuant to § 56-599 A of the Code, proposed guidelines for use by each electric utility in developing its IRP. The November 12 Order also afforded interested persons an opportunity to comment on the proposed guidelines.

On December 12, 2008, interested persons submitted comments on the proposed guidelines. Some commenters suggested revisions for the Commission to consider. Comments were filed by Appalachian Power Company; Richard F. Hirsh; Barbara Kessinger; Kentucky Utilities Company d/b/a Old Dominion Power Company; Office of the Attorney General, Division of Consumer Counsel; The Potomac Edison Company d/b/a Allegheny Power; Virginia Chapter of the Sierra Club; Southern Environmental Law Center; Virginia Committee for Fair Utility Rates; Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Virginia Power"); Virginia Energy Providers Association; Virginia Independent Power Producers; and Washington Gas Light Company. Also, MeadWestvaco Corporation filed a Notice of Intent to Participate.¹ On December 17, 2008, Virginia Power filed a motion requesting permission to file reply comments by December 22, 2008.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows. Pursuant to § 56-599 A of the Code, which states that the Commission "may establish guidelines for developing an IRP," the Commission hereby establishes such guidelines as attached to this Order.

We acknowledge and appreciate the comments submitted by numerous interested persons on the guidelines as proposed in our November 12 Order. We have considered all such comments and, at this time, find that it is reasonable to establish the guidelines as attached to this Order. For ease of

reference of those submitting comments, a version of the guidelines showing the additions and deletions from the guidelines as proposed in the November 12 Order is also attached hereto.

In addition, we emphasize that, as mandated by § 56-599 A of the Code, the attached are "guidelines" - they are not, for example, filing requirements issued as part of the Virginia Administrative Code. New language in Section C of the guidelines further clarifies as follows: "To the extent the information requested is not currently available or is not applicable, the utility will clearly note and explain this in the appropriate location in the plan, narrative, or schedule." Moreover, § 56-599 C of the Code permits the Commission to modify the guidelines after gaining experience therewith by issuing subsequent guidelines for updated and revised IRPs.

Similarly, the guidelines established herein do not limit the information that the Commission may determine is reasonable and relevant as part of the utilities' subsequent, actual IRP cases to be filed by September 1, 2009. In this regard, we note that several interested persons filed comments regarding specific issues and analyses that the commenter asserted should be part of the guidelines and part of those subsequent IRP cases. Accordingly, we also clarify that the exclusion from the guidelines herein of any comments or recommendations received in this matter does not represent a rejection of such request for purposes of any particular, subsequent IRP case. Rather, such issues may be raised - and addressed by all participants and the Commission - as part of the specific IRP case filed by the utility.²

Finally, our November 12 Order did not provide for reply comments and, for the reasons discussed above, we continue to find that it is not necessary to consider reply comments in this matter.

Accordingly, IT IS ORDERED THAT:

- (1) The guidelines as set forth in Attachment B to this Order are hereby established pursuant to § 56-599 A of the Code for use by each investor-owned electric utility in developing its initial IRP.
- (2) Each IRP is to be filed with this Commission pursuant to the Commission's November 12 Order and § 56-599 of the Code, by September 1, 2009. Said filing shall be in conformity with the Commission's Rules of Practice and Procedure in effect at the time of the filing.
- (3) As directed in the November 12 Order, each electric utility shall provide a copy of its IRP filed with the Commission to the chairmen of the committees and the commission set out in the third enactment clauses in Chapters 476 and 603 of the 2008 Virginia Acts of Assembly.

(4) The motion filed by Virginia Power for leave to file reply comments is denied.

(5) There being nothing further to come before the Commission in this proceeding, this case is hereby closed and the papers herein placed upon the Commission's file for ended causes.

Commissioner Dimitri did not participate in this matter.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219. A copy shall also be delivered to the Commission's Office of General Counsel and Divisions of Energy Regulation and Economics and Finance.

¹ MeadWestvaco Corporation stated it had not determined its final recommendation or position on the issues involved, but wished to be on the service list for this proceeding.

² Several commenters also raised questions regarding procedures for the IRP cases. As noted in the November 12 Order, and as referenced in the proposed guidelines, each utility shall file an initial IRP with the Clerk of the Commission in conformity with the Commission's Rules of Practice and Procedure.

**DEPARTMENT OF ENVIRONMENTAL QUALITY AND
THE DEPARTMENT OF CONSERVATION AND
RECREATION**

**Development of Total Maximum Daily Load
Implementation Plan**

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of a total maximum daily load (TMDL) implementation plan for the Pigg River and Old Womans Creek watersheds in Franklin County, Pittsylvania County, Henry County and the Town of Rocky Mount, Virginia. Segments of these streams were originally listed as impaired due to violations of the state's water quality standard for bacteria on the 1998 and 2004 § 303(d) TMDL Priority Lists. A TMDL was developed to address the bacterial impairment. The TMDL was approved by EPA on September 11, 2006, and is available on DEQ's website at:

<https://www.deq.virginia.gov/TMDLDataSearch/ReportSearch.aspx>.

Section 62.1-44.19:7 C of the Code of Virginia requires the development of an implementation plan (IP) for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts.

DEQ and DCR will hold a final public meeting on Thursday, February 19, 2009, at 6:30 p.m. to inform the public of the IP development and to solicit comments on the draft document. The draft IP will be available for review on the web no later than February 12, 2009, at <http://www.deq.virginia.gov/tmdl/iprpts.html>. The meeting will be held at the Franklin Center in Rocky Mount, Virginia.

Directions to the Franklin Center: From US 220, take the first Rocky Mount exit. This exit puts you on North Main Street. Go 3-4 miles. You will come to a light that crosses old railroad tracks and onto a bridge. Drive straight ahead (go past The Hub Restaurant), look for Claiborne Avenue on right (between Red Clay Cafe and Rocky Mount UMC). Turn right onto Claiborne Avenue, go 1/2 mile to The Franklin Center on left.

The public comment period for this final public meeting will end on Tuesday, March 23, 2009. Questions or information requests should be addressed to Mary Dail, Department of Environmental Quality, (540) 562-6715 or mrtdail@deq.virginia.gov. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Mary Dail, Department of Environmental Quality, 3019 Peters Creek Road, Roanoke, VA 24019, telephone (540) 562-6715, FAX (540) 562-6725, or email mrtdail@deq.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Consent Order - Hammaker East, L.P.

An enforcement action has been proposed for Hammaker East, L.P. for an alleged violation in Chesterfield County, Virginia. A consent order describes a settlement to resolve an unauthorized discharge that occurred at 7600 Fort Darling Road. The order requires corrective action, monitoring, and payment of a civil charge. A description of the proposed order is available at the DEQ office named below or online at www.deq.virginia.gov. Frank Lupini will accept comments by email felupini@deq.virginia.gov, FAX (804) 527-5106 or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from February 2, 2009, to March 5, 2009.

General Notices/Errata

DEPARTMENT OF HEALTH

Drinking Water Construction Funding

VDH will offer funding informational meetings at six locations throughout the state. Attendance is on a first come basis and is limited to 50 people at each location.

Material will focus on Drinking Water Construction funding available through VDH. The Drinking Water State Revolving Fund (DWSRF) Program and the Water Supply Assistance Fund (WSAGF) Program will be discussed. You will be asked for your specific suggestions and opinions.

You will be advised on program updates and then guided through program criteria, program applications, and the project scheduling steps needed for smooth project implementation.

If you plan to attend, please return the form below by February 13, 2009 so we may properly plan the meeting. You may mail it to Theresa Hewlett at the above address or FAX at (804) 864-7521. If you have any questions, please call Theresa Hewlett at (804) 864-7501.

I (we) wish to attend the meeting indicated below:

- Danville 9:00 a.m.-12:00 p.m., Wednesday, February 18, 2009 at the Pittsylvania/Danville Health District's Auditorium, 326 Taylor Drive, Danville, VA
- Abingdon 9:00 a.m.-12:00 p.m., Thursday, February 19, 2009 at the Southwest VA Higher Education Center, Room 222, Abingdon, VA
- Chesterfield 9:00 a.m.-12:00 p.m., Monday, February 23, 2009 at the Chesterfield County Health Department's Multi-purpose Room, 9501 Lucy Corr Circle, Chesterfield, VA
- Suffolk Area 9:00 a.m.-12:00 p.m., Tuesday, February 24, 2009 at the Town of Windsor's Municipal Building Counsel Chamber, 8 East Windsor Blvd., Windsor, VA. (Isle of Wight County)
- Culpeper 9:00 a.m.-12:00 p.m., Wednesday, February 25, 2009 at the County of Culpeper's Board of Supervisors Room (rear entrance to Administration Bldg. and 3-hr. parking across the street), 302 North Main Street, Culpeper, VA
- Lexington 9:00 a.m.-12:00 p.m., Thursday, February 26, 2009 at the Virginia Military Institute's Preston Library, Turman Room, Lexington, VA

There will be _____ persons in my party as follows:

Name	Address	Phone	Representing
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

* * *

We are pleased to announce several opportunities for drinking water funding. Construction applications may be submitted year round. However, applications received after the due date stated below will be considered for funding in following cycle. As described below, funding is made possible by our Drinking Water State Revolving Fund (DWSRF) Program. We anticipate having at least \$10 million. Also the enclosed attachment describes our Water Supply Assistance Grant Fund Program. Our FY 2010 DWSRF Intended Use Plan will be developed using your input on these issues.

(1) 1452(k) Source Water Protection Initiatives - (Yellow application) Must be postmarked by March 27, 2009.

This provision allows VDH to loan money for activities to protect important drinking water resources. Loan funds are available to: (1) community and non-profit noncommunity waterworks to acquire land/conservation easements and (2) to community waterworks, only, to establish local, voluntary incentive-based protection measures.

(2) Construction Funds – (Cream application) Must be postmarked by March 27, 2009.

Private and public owners of community waterworks and nonprofit noncommunity waterworks are eligible to apply for construction funds. VDH makes selections based on criteria described in the Program Design Manual, such as existing public health problems, noncompliance, affordability, regionalization, the availability of matching funds, etc. Readiness to proceed with construction is a key element. A Preliminary Engineering Report must be submitted if required by VDH. An instruction packet and Construction Project Schedule are included.

(3) Set-Aside Suggestion Forms – (White form) Must be postmarked by March 27, 2009.

Anyone has the opportunity to suggest new or continuing set-aside (nonconstruction) activities. Set-aside funds help VDH assist waterworks owners to prepare for future drinking water challenges and assure the sustainability of safe drinking water.

(4) Planning & Design Grants – (Gray application) Must be postmarked by August 28, 2009.

Private and public owners of community waterworks are eligible to apply for these grant funds. Grants can be up to \$30,000 per project for small, financially stressed, community waterworks serving fewer than 3,300 persons. Eligible projects may include preliminary engineering planning, design of plans and specifications, performance of source water quality and quantity studies, drilling test wells to determine source feasibility, or other similar technical assistance projects. These funds could assist the waterworks owner in future submittals for construction funds.

The VDH's Program Design Manual describes the features of the above opportunities for funding. After receiving the aforementioned public input, VDH will develop a draft Intended Use Plan for public review and comment. When developed in August, the draft Intended Use Plan will describe specific details for use of the funds. A public meeting is planned for October and written comments will be accepted before we submit a final version to the USEPA for approval.

You may request the applications, set-aside suggestion form, Program Design Manual and information from and forward any comments to Steve Pellei, P.E., FCAP Director, by writing, calling, or faxing at the above address. The materials are also accessible on our website www.vdh.virginia.gov/drinkingwater/financial.

* * *

The 1999 General Assembly created the Water Supply Assistance Grant Fund (WSAGF) in Section 32.1-171.2 of the Code of Virginia. The purpose of the WSAG is to make grant funds available to localities and owners of waterworks to assist in the provision of drinking water.

Funds are available by submitting an application postmarked on or before the dates indicated for the following:

(1) Planning Grants – Application must be postmarked by August 28, 2009.

Of available funding, \$60,000 or 16.67% will be used for planning needs. Your application cannot exceed this amount.

In ranking of applications, preference is given to those that address problems of small, community waterworks with multi-jurisdictional support. The applicant submits the current VDH planning application to VDH. To promote coordination of funding and streamline the process for applicants, grants are prioritized in accordance with rating criteria of the current DWSRF Program. For WSAGF funding purposes only, up to fifty (50) extra points are added to the DWSRF rating criteria relative to the Stress Index rank.

Eligible activities may include (but not be limited to): Capacity building activities addressing regionalization or consolidation, performance of source water quality and quantity studies, drilling test wells to determine source feasibility, income surveys, preliminary engineering planning, design and preparation of plans and specifications, or other similar technical assistance projects.

(2) Surface Water Development or Improvement Grants – Application must be postmarked by March 27, 2009.

Of available funding, \$200,000 or 55.55% will be used for community waterworks surface source water development or improvement activities. Your application cannot exceed this amount.

General Notices/Errata

The applicant submits the current VDH construction application to VDH. In ranking of applications, preference is given to those that address problems of small, community waterworks with multi-jurisdictional support.

Eligible activities may include: land purchase, options to purchase land, general site development costs, and dam upgrade and construction.

(3) Small Project Construction Grants – Application must be postmarked by March 27, 2009.

Of available funding, \$100,000 or 27.78% will be used for small project construction that is defined as a project whose total project cost does not exceed \$50,000. Eligible activities may include (but not be limited to): upgrade or construction of well or spring sources, waterlines, storage tanks, and treatment.

The applicant submits the current VDH construction application to VDH. To promote coordination of funding and streamline the process for applicants, grants are prioritized in accordance with rating criteria of the current DWSRF Program. For WSAGF purposes only, up to thirty (30) extra points are added to the VDH rating criteria relative to the Stress Index rank. Preference is given to community waterworks. This priority system ensures that all eligible acute or chronic health/SDWA compliance projects are funded before any other eligible project.

The VDH's WSAGF Program Guidelines describes the features of the above opportunities for funding.

You may request the applications or Program Guidelines from us by writing, calling, or faxing at the above address. The applications are also accessible on our website www.vdh.virginia.gov/drinkingwater/financial.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Order of the State Lottery Department was filed with the Virginia Registrar of Regulations on January 14, 2009. The order may be viewed at the State Lottery Department, 900 East 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 Ninety (08)

2 Ways 2 Win Sweepstakes; (effective 1/14/09)

ERRATA

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Titles of Regulations: 12VAC5-230. State Medical Facilities Plan (amending 12VAC5-230-10, 12VAC5-230-30; adding 12VAC5-230-40 through 12VAC5-230-1000; repealing 12VAC5-230-20).

Publication: 25:9 VA.R. 1706-1742 January 5, 2009.

Correction to final regulation:

Page 1707, 12VAC5-230-10, definition of "Bed," line 2, strike "are" and insert "care"

Page 1710, 12VAC5-230-10, definition of "PET/CT," line 7, strike "services" and insert "service"

Page 1713, 12VAC5-230-60, first sentence should read: In the review of reviewing competing applications, [preference consideration will may] be given to applicants [the an] applicant [that who] :

Page 1714, 12VAC5-230-70, strike " [D. Applicants shall not use this section to justify a need to establish new services.]"

Page 1714, 12VAC5-230-80, insert "[D. Applicants shall not use this section to justify a need to establish new services.]"

Page 1715, 12VAC5-230-110, line 4, strike "if"

Page 1719, 12VAC5-230-340 B, line 2, change "tereotactic" to "stereotactic"

Page 1741, 12VAC5-230-870 subdivision 6, change "Sservices" to "Services"

R03-117, January 8, 2009

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.

