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Virginia Register of Regulations

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

The Joint Commission 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.

PUBLICATION SCHEDULE AND DEADLINES

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

July 2009 through April 2010

Volume: Issue	Material Submitted By Noon*	Will Be Published On
INDEX 3 Volume 25		**July 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
25:26	August 12, 2009	August 31, 2009
FINAL INDEX Volume 25		**October 2009**
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
26:6	November 4, 2009	November 23, 2009
26:7	November 17, 2009 **(Tuesday)**	December 7, 2009
INDEX 1 Volume 26		**January 2010**
26:8	December 2, 2009	December 21, 2009
26:9	December 15, 2009 **(Tuesday)**	January 4, 2010
26:10	December 29, 2009 **(Tuesday)**	January 18, 2010
26:11	January 13, 2010	February 1, 2010
26:12	January 27, 2010	February 15, 2010
26:13	February 10, 2010	March 1, 2010
26:14	February 24, 2010	March 15, 2010
INDEX 2 Volume 26		**April 2010**
26:15	March 10, 2010	March 29, 2010
26:16	March 24, 2010	April 12, 2010
26:17	April 7, 2010	April 26, 2010

*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 2. Agriculture			
2 VAC 5-100-10 through 2VAC5-100-40	Repealed	25:16 VA.R. 2831	5/13/09
2 VAC 5-320-10	Erratum	25:13 VA.R. 2565	--
2 VAC 5-325-10	Erratum	25:13 VA.R. 2565	--
2 VAC 5-330-30	Erratum	25:13 VA.R. 2565	--
2 VAC 5-330-30	Amended	25:15 VA.R. 2710	3/9/09
2 VAC 5-340-140	Erratum	25:13 VA.R. 2565	--
2 VAC 5-340-170	Erratum	25:13 VA.R. 2565	--
2 VAC 5-350-20	Erratum	25:13 VA.R. 2565	--
2 VAC 5-370-10	Erratum	25:13 VA.R. 2566	--
2 VAC 5-380-10	Erratum	25:13 VA.R. 2566	--
2 VAC 5-390-20	Erratum	25:13 VA.R. 2566	--
2 VAC 5-390-80	Erratum	25:13 VA.R. 2566	--
2 VAC 5-400-10	Erratum	25:13 VA.R. 2566	--
2 VAC 5-440-20	Erratum	25:13 VA.R. 2566	--
Title 4. Conservation and Natural Resources			
4 VAC 20-260-30 emer	Amended	25:21 VA.R. 3783	6/1/09-6/30/09
4 VAC 20-270-10 emer	Amended	25:14 VA.R. 2591	2/26/09-3/28/09
4 VAC 20-270-30 emer	Amended	25:14 VA.R. 2591	2/26/09-3/28/09
4 VAC 20-270-30	Amended	25:16 VA.R. 2831	3/26/09
4 VAC 20-270-40 emer	Amended	25:14 VA.R. 2592	2/26/09-3/28/09
4 VAC 20-270-40	Amended	25:16 VA.R. 2832	3/26/09
4 VAC 20-270-40	Amended	25:21 VA.R. 3783	6/1/09
4 VAC 20-270-50	Amended	25:21 VA.R. 3784	6/1/09
4 VAC 20-270-55 emer	Amended	25:14 VA.R. 2592	2/26/09-3/28/09
4 VAC 20-270-55	Amended	25:16 VA.R. 2832	3/26/09
4 VAC 20-270-58	Amended	25:21 VA.R. 3784	6/1/09
4 VAC 20-270-60 emer	Amended	25:14 VA.R. 2592	2/26/09-3/28/09
4 VAC 20-320-70	Amended	25:21 VA.R. 3784	6/1/09
4 VAC 20-395-10	Amended	25:19 VA.R. 3289	6/30/09
4 VAC 20-395-20	Amended	25:19 VA.R. 3289	6/30/09
4 VAC 20-395-30	Amended	25:19 VA.R. 3290	6/30/09
4 VAC 20-395-40	Amended	25:19 VA.R. 3290	6/30/09
4 VAC 20-450-30	Amended	25:21 VA.R. 3785	6/1/09
4 VAC 20-490-20	Amended	25:14 VA.R. 2593	3/1/09
4 VAC 20-490-30	Amended	25:14 VA.R. 2595	3/1/09
4 VAC 20-490-40	Amended	25:14 VA.R. 2595	3/1/09
4 VAC 20-490-41	Amended	25:14 VA.R. 2595	3/1/09
4 VAC 20-530-10 emer	Amended	25:14 VA.R. 2596	2/26/09-3/28/09
4 VAC 20-530-20 emer	Amended	25:14 VA.R. 2596	2/26/09-3/28/09

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-530-31 emer	Amended	25:14 VA.R. 2597	2/26/09-3/28/09
4 VAC 20-530-31	Amended	25:16 VA.R. 2833	3/26/09
4 VAC 20-530-40 emer	Amended	25:14 VA.R. 2597	2/26/09-3/28/09
4 VAC 20-560-40 emer	Amended	25:19 VA.R. 3292	5/1/09-5/30/09
4 VAC 20-620-70	Amended	25:14 VA.R. 2597	3/1/09
4 VAC 20-650-10	Amended	25:21 VA.R. 3785	6/1/09
4 VAC 20-650-20	Amended	25:21 VA.R. 3786	6/1/09
4 VAC 20-650-30	Amended	25:21 VA.R. 3787	6/1/09
4 VAC 20-670-20	Amended	25:21 VA.R. 3788	6/1/09
4 VAC 20-670-25	Amended	25:21 VA.R. 3788	6/1/09
4 VAC 20-670-30	Amended	25:21 VA.R. 3788	6/1/09
4 VAC 20-670-40	Amended	25:21 VA.R. 3789	6/1/09
4 VAC 20-700-20	Amended	25:14 VA.R. 2598	3/1/09
4 VAC 20-880-30	Amended	25:21 VA.R. 3789	6/1/09
4 VAC 20-950-30	Amended	25:16 VA.R. 2833	4/1/09
4 VAC 20-1040-25	Amended	25:21 VA.R. 3789	6/1/09
4 VAC 20-1090-30	Amended	25:21 VA.R. 3790	6/1/09
4 VAC 20-1120-31	Added	25:21 VA.R. 3792	7/1/09
4 VAC 20-1120-32	Added	25:21 VA.R. 3792	7/1/09
4 VAC 20-1140-20	Amended	25:21 VA.R. 3793	6/1/09
4 VAC 20-1200-10	Added	25:16 VA.R. 2834	4/1/09
4 VAC 20-1200-20	Added	25:16 VA.R. 2834	4/1/09
4 VAC 20-1200-30	Added	25:16 VA.R. 2834	4/1/09
4 VAC 20-1210-10 emer	Added	25:16 VA.R. 2835	3/26/09-4/24/09
4 VAC 20-1210-10	Added	25:19 VA.R. 3293	4/30/09
4 VAC 20-1210-20 emer	Added	25:16 VA.R. 2835	3/26/09-4/24/09
4 VAC 20-1210-20	Added	25:19 VA.R. 3293	4/30/09
4 VAC 20-1210-30 emer	Added	25:16 VA.R. 2835	3/26/09-4/24/09
4 VAC 20-1210-30	Added	25:19 VA.R. 3293	4/30/09
4 VAC 25-31 (Forms)	Amended	25:16 VA.R. 2835	--
4 VAC 25-40-25	Amended	25:20 VA.R. 3478	7/8/09
4 VAC 25-40-90	Amended	25:20 VA.R. 3478	7/8/09
4 VAC 25-40-120	Amended	25:20 VA.R. 3478	7/8/09
4 VAC 25-40-130	Amended	25:20 VA.R. 3479	7/8/09
4 VAC 25-40-190	Amended	25:20 VA.R. 3479	7/8/09
4 VAC 25-40-260	Amended	25:20 VA.R. 3479	7/8/09
4 VAC 25-40-350	Amended	25:20 VA.R. 3479	7/8/09
4 VAC 25-40-365	Added	25:20 VA.R. 3479	7/8/09
4 VAC 25-40-410	Amended	25:20 VA.R. 3479	7/8/09
4 VAC 25-40-720	Amended	25:20 VA.R. 3479	7/8/09
4 VAC 25-40-780	Amended	25:20 VA.R. 3479	7/8/09
4 VAC 25-40-800	Amended	25:20 VA.R. 3480	7/8/09
4 VAC 25-40-810	Amended	25:20 VA.R. 3481	7/8/09
4 VAC 25-40-880	Amended	25:20 VA.R. 3481	7/8/09
4 VAC 25-40-890	Amended	25:20 VA.R. 3482	7/8/09
4 VAC 25-40-893	Added	25:20 VA.R. 3482	7/8/09
4 VAC 25-40-925	Added	25:20 VA.R. 3482	7/8/09
4 VAC 25-40-1095	Added	25:20 VA.R. 3482	7/8/09
4 VAC 25-40-1600	Amended	25:20 VA.R. 3482	7/8/09
4 VAC 25-40-2790	Amended	25:20 VA.R. 3482	7/8/09
4 VAC 25-40-2800	Amended	25:20 VA.R. 3482	7/8/09

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4 VAC 25-40-2980	Amended	25:20 VA.R. 3482	7/8/09
4 VAC 25-40-3050	Repealed	25:20 VA.R. 3482	7/8/09
4 VAC 25-40-3060	Repealed	25:20 VA.R. 3483	7/8/09
4 VAC 25-40-3070	Repealed	25:20 VA.R. 3483	7/8/09
4 VAC 25-40-3080	Repealed	25:20 VA.R. 3483	7/8/09
4 VAC 25-40-3090	Repealed	25:20 VA.R. 3483	7/8/09
4 VAC 25-40-3110	Repealed	25:20 VA.R. 3483	7/8/09
4 VAC 25-40-3120	Repealed	25:20 VA.R. 3483	7/8/09
4 VAC 25-40-3800	Amended	25:20 VA.R. 3483	7/8/09
4 VAC 25-40-3830	Amended	25:20 VA.R. 3483	7/8/09
4 VAC 25-40-3840	Amended	25:20 VA.R. 3483	7/8/09
4 VAC 25-40-3990	Amended	25:20 VA.R. 3484	7/8/09
4 VAC 25-40-4060	Amended	25:20 VA.R. 3484	7/8/09
4 VAC 25-40-4061	Added	25:20 VA.R. 3484	7/8/09
4 VAC 25-40-4062	Added	25:20 VA.R. 3484	7/8/09
4 VAC 25-40-4063	Added	25:20 VA.R. 3484	7/8/09
4 VAC 25-40-4064	Added	25:20 VA.R. 3484	7/8/09
4 VAC 25-40-4065	Added	25:20 VA.R. 3484	7/8/09
4 VAC 25-40-4066	Added	25:20 VA.R. 3484	7/8/09
4 VAC 25-40-4240	Amended	25:20 VA.R. 3485	7/8/09
4 VAC 25-40-4260	Amended	25:20 VA.R. 3485	7/8/09
4 VAC 25-40-4400	Amended	25:20 VA.R. 3485	7/8/09
4 VAC 25-130 (Forms)	Amended	25:16 VA.R. 2836	--
4 VAC 50-60-10	Amended	25:16 VA.R. 2838	7/1/09
4 VAC 50-60-1100 through 4VAC50-60-1140	Amended	25:16 VA.R. 2849-2851	7/1/09
4 VAC 50-60-1150	Amended	25:16 VA.R. 2851	5/13/09
4 VAC 50-60-1160 through 4 VAC 50-60-1180	Amended	25:16 VA.R. 2853-2868	7/1/09
4 VAC 50-60-1182	Added	25:16 VA.R. 2869	7/1/09
4 VAC 50-60-1184	Added	25:16 VA.R. 2869	7/1/09
4 VAC 50-60-1186	Added	25:16 VA.R. 2870	7/1/09
4 VAC 50-60-1188	Added	25:16 VA.R. 2871	7/1/09
4 VAC 50-60-1190	Amended	25:16 VA.R. 2871	7/1/09
Title 5. Corporations			
5 VAC 5-20-10	Amended	25:14 VA.R. 2601	3/11/09
5 VAC 5-20-20	Amended	25:14 VA.R. 2601	3/11/09
5 VAC 5-20-80	Amended	25:14 VA.R. 2602	3/11/09
5 VAC 5-20-90	Amended	25:14 VA.R. 2602	3/11/09
5 VAC 5-20-100	Amended	25:14 VA.R. 2602	3/11/09
5 VAC 5-20-120 through 5 VAC 5-20-150	Amended	25:14 VA.R. 2603-2604	3/11/09
5 VAC 5-20-170	Amended	25:14 VA.R. 2604	3/11/09
5 VAC 5-20-180	Amended	25:14 VA.R. 2605	3/11/09
5 VAC 5-20-240 through 5 VAC 5-20-280	Amended	25:14 VA.R. 2605-2608	3/11/09
Title 8. Education			
8 VAC 20-80-10 through 8 VAC 20-80-190	Repealed	25:21 VA.R. 3849	7/7/09
8 VAC 20-81-10 through 8 VAC 20-81-340	Added	25:21 VA.R. 3849	7/7/09
8 VAC 20-131-5	Amended	25:21 VA.R. 3850	7/31/09
8 VAC 20-131-30	Amended	25:21 VA.R. 3851	7/31/09
8 VAC 20-131-50	Amended	25:21 VA.R. 3852	7/31/09
8 VAC 20-131-60	Amended	25:21 VA.R. 3857	7/31/09
8 VAC 20-131-80	Amended	25:21 VA.R. 3859	7/31/09
8 VAC 20-131-100	Amended	25:21 VA.R. 3859	7/31/09

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8 VAC 20-131-140	Amended	25:21 VA.R. 3860	7/31/09
8 VAC 20-131-210	Amended	25:21 VA.R. 3860	7/31/09
8 VAC 20-131-270	Amended	25:21 VA.R. 3861	7/31/09
8 VAC 20-131-280	Amended	25:21 VA.R. 3862	7/31/09
8 VAC 20-131-290	Amended	25:21 VA.R. 3863	7/31/09
8 VAC 20-131-300	Amended	25:21 VA.R. 3864	7/31/09
8 VAC 20-131-310	Amended	25:21 VA.R. 3866	7/31/09
8 VAC 20-131-325	Amended	25:21 VA.R. 3867	7/31/09
8 VAC 20-131-360	Amended	25:21 VA.R. 3867	7/31/09
8 VAC 20-521-60	Amended	25:19 VA.R. 3295	7/15/09
8 VAC 20-650-30	Amended	25:19 VA.R. 3297	7/15/09
Title 9. Environment			
9 VAC 5-20-21	Amended	25:19 VA.R. 3298	6/24/09
9 VAC 5-30-15	Amended	25:19 VA.R. 3302	6/24/09
9 VAC 5-30-80	Amended	25:19 VA.R. 3302	6/24/09
9 VAC 5-80-1170	Amended	25:19 VA.R. 3302	6/24/09
9 VAC 5-80-1615	Amended	25:20 VA.R. 3492	7/23/09
9 VAC 5-80-1625	Amended	25:20 VA.R. 3503	7/23/09
9 VAC 5-80-1695	Amended	25:20 VA.R. 3504	7/23/09
9 VAC 5-80-1915	Added	25:20 VA.R. 3505	7/23/09
9 VAC 5-80-1925	Amended	25:20 VA.R. 3506	7/23/09
9 VAC 5-80-1935	Amended	25:20 VA.R. 3507	7/23/09
9 VAC 5-80-1945	Amended	25:20 VA.R. 3507	7/23/09
9 VAC 5-80-1955	Amended	25:20 VA.R. 3508	7/23/09
9 VAC 5-80-1965	Amended	25:20 VA.R. 3508	7/23/09
9 VAC 5-80-2010	Amended	25:20 VA.R. 3508	7/23/09
9 VAC 5-80-2020	Amended	25:20 VA.R. 3518	7/23/09
9 VAC 5-80-2140	Amended	25:20 VA.R. 3518	7/23/09
9 VAC 5-80-2195	Added	25:20 VA.R. 3519	7/23/09
9 VAC 5-80-2200	Amended	25:20 VA.R. 3520	7/23/09
9 VAC 5-80-2210	Amended	25:20 VA.R. 3520	7/23/09
9 VAC 5-80-2220	Amended	25:20 VA.R. 3521	7/23/09
9 VAC 5-80-2230	Amended	25:20 VA.R. 3522	7/23/09
9 VAC 5-80-2240	Amended	25:20 VA.R. 3522	7/23/09
9 VAC 20-80 (Forms)	Amended	25:18 VA.R. 3149	--
9 VAC 25-32-480	Erratum	25:15 VA.R. 2804	--
9 VAC 25-151-10	Amended	25:19 VA.R. 3306	6/24/09
9 VAC 25-151-40 through 9 VAC 25-151-290	Amended	25:19 VA.R. 3308-3379	6/24/09
9 VAC 25-151-310 through 9 VAC 25-151-370	Amended	25:19 VA.R. 3379-3385	6/24/09
9 VAC 25-190-10	Amended	25:19 VA.R. 3385	6/24/09
9 VAC 25-190-20	Amended	25:19 VA.R. 3386	6/24/09
9 VAC 25-190-50	Amended	25:19 VA.R. 3386	6/24/09
9 VAC 25-190-60	Amended	25:19 VA.R. 3387	6/24/09
9 VAC 25-190-65	Added	25:19 VA.R. 3388	6/24/09
9 VAC 25-190-70	Amended	25:19 VA.R. 3389	6/24/09
9 VAC 25-580 (Forms)	Amended	25:18 VA.R. 3154	--
9 VAC 25-720-50	Amended	25:20 VA.R. 3523	7/8/09
9 VAC 25-720-60	Erratum	25:19 VA.R. 3464	--
9 VAC 25-720-60	Amended	25:20 VA.R. 3531	7/8/09
9 VAC 25-720-90	Amended	25:20 VA.R. 3544	7/8/09
9 VAC 25-720-110	Amended	25:20 VA.R. 3546	7/8/09

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Title 10. Finance and Financial Institutions			
10 VAC 5-200-60	Amended	25:14 VA.R. 2609	3/1/09
10 VAC 5-200-110	Amended	25:14 VA.R. 2609	3/1/09
10 VAC 5-200-130	Added	25:14 VA.R. 2613	3/1/09
Title 11. Gaming			
11 VAC 10-20-330	Amended	25:18 VA.R. 3162	6/1/09
11 VAC 10-50-30	Amended	25:17 VA.R. 3005	5/27/09
11 VAC 10-70-20	Amended	25:15 VA.R. 2712	4/15/09
11 VAC 10-70-90	Amended	25:15 VA.R. 2712	4/15/09
11 VAC 10-110-90	Amended	25:19 VA.R. 3407	6/1/09
11 VAC 10-120-80	Amended	25:17 VA.R. 3006	5/27/09
11 VAC 10-180-10	Amended	25:17 VA.R. 3007	5/27/09
11 VAC 10-180-35	Amended	25:17 VA.R. 3007	5/27/09
11 VAC 10-180-70	Amended	25:17 VA.R. 3008	5/27/09
11 VAC 10-180-80	Amended	25:17 VA.R. 3009	5/27/09
11 VAC 10-180-110	Amended	25:17 VA.R. 3010	5/27/09
Title 12. Health			
12 VAC 5-230-540	Amended	25:13 VA.R. 2316	4/1/09
12 VAC 5-230-550	Amended	25:13 VA.R. 2317	4/1/09
12 VAC 5-230-560	Amended	25:13 VA.R. 2317	4/1/09
12 VAC 5-481-451	Amended	25:21 VA.R. 3888	8/6/09
12 VAC 30-10-150	Amended	25:14 VA.R. 2614	4/15/09
12 VAC 30-10-560	Amended	25:21 VA.R. 3898	7/23/09
12 VAC 30-10-930	Amended	25:14 VA.R. 2615	4/15/09
12 VAC 30-20-90	Amended	25:14 VA.R. 2615	4/15/09
12 VAC 30-20-140	Repealed	25:21 VA.R. 3899	7/23/09
12 VAC 30-20-141	Added	25:21 VA.R. 3900	7/23/09
12 VAC 30-20-210	Amended	25:20 VA.R. 3571	7/23/09
12 VAC 30-20-500	Amended	25:14 VA.R. 2618	4/15/09
12 VAC 30-20-520	Amended	25:14 VA.R. 2618	4/15/09
12 VAC 30-30-10	Amended	25:20 VA.R. 3577	7/9/09
12 VAC 30-30-20	Amended	25:21 VA.R. 3902	7/23/09
12 VAC 30-40-10	Erratum	25:19 VA.R. 3464	--
12 VAC 30-40-10	Amended	25:20 VA.R. 3574	7/23/09
12 VAC 30-40-105	Added	25:21 VA.R. 3904	7/23/09
12 VAC 30-40-280	Amended	25:21 VA.R. 3904	7/23/09
12 VAC 30-40-290	Amended	25:21 VA.R. 3905	7/23/09
12 VAC 30-50-10	Amended	25:14 VA.R. 2618	4/15/09
12 VAC 30-60-200	Added	25:21 VA.R. 3907	7/23/09
12 VAC 30-60-500	Added	25:20 VA.R. 3586	7/9/09
12 VAC 30-80-30	Amended	25:21 VA.R. 3909	7/23/09
12 VAC 30-80-40	Amended	25:19 VA.R. 3408	7/1/09
12 VAC 30-110-40	Amended	25:14 VA.R. 2619	4/15/09
12 VAC 30-110-370	Amended	25:14 VA.R. 2619	4/15/09
12 VAC 30-110-380	Repealed	25:14 VA.R. 2619	4/15/09
12 VAC 30-110-670	Amended	25:14 VA.R. 2620	4/15/09
12 VAC 30-110-680	Amended	25:14 VA.R. 2620	4/15/09
12 VAC 30-110-700	Amended	25:14 VA.R. 2620	4/15/09
12 VAC 30-110-720	Amended	25:14 VA.R. 2620	4/15/09
12 VAC 30-110-741	Amended	25:14 VA.R. 2623	4/15/09
12 VAC 30-110-980	Amended	25:14 VA.R. 2623	4/15/09

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

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12 VAC 30-110-990	Repealed	25:14 VA.R. 2623	4/15/09
12 VAC 30-110-1000	Repealed	25:14 VA.R. 2623	4/15/09
12 VAC 30-110-1040	Amended	25:14 VA.R. 2623	4/15/09
12 VAC 30-110-1500	Added	25:21 VA.R. 3912	7/23/09
12 VAC 30-120-70	Amended	25:20 VA.R. 3599	7/9/09
12 VAC 30-120-90	Amended	25:20 VA.R. 3600	7/9/09
12 VAC 30-120-140	Amended	25:14 VA.R. 2624	4/15/09
12 VAC 30-120-140	Amended	25:20 VA.R. 3602	7/9/09
12 VAC 30-120-211	Amended	25:20 VA.R. 3605	7/9/09
12 VAC 30-120-213	Amended	25:20 VA.R. 3608	7/9/09
12 VAC 30-120-225	Amended	25:20 VA.R. 3609	7/9/09
12 VAC 30-120-229	Amended	25:20 VA.R. 3612	7/9/09
12 VAC 30-120-237	Amended	25:20 VA.R. 3613	7/9/09
12 VAC 30-120-247	Amended	25:20 VA.R. 3614	7/9/09
12 VAC 30-120-700	Amended	25:20 VA.R. 3616	7/9/09
12 VAC 30-120-710	Amended	25:20 VA.R. 3619	7/9/09
12 VAC 30-120-754	Amended	25:20 VA.R. 3620	7/9/09
12 VAC 30-120-758	Amended	25:20 VA.R. 3621	7/9/09
12 VAC 30-120-762	Amended	25:20 VA.R. 3622	7/9/09
12 VAC 30-120-770	Amended	25:20 VA.R. 3623	7/9/09
12 VAC 30-120-900	Amended	25:20 VA.R. 3625	7/9/09
12 VAC 30-120-910	Amended	25:19 VA.R. 3410	7/1/09
12 VAC 30-120-910	Amended	25:20 VA.R. 3627	7/9/09
12 VAC 30-120-920	Amended	25:20 VA.R. 3628	7/9/09
12 VAC 30-120-970	Amended	25:20 VA.R. 3630	7/9/09
12 VAC 30-120-1500	Amended	25:20 VA.R. 3632	7/9/09
12 VAC 30-120-1550	Amended	25:20 VA.R. 3634	7/9/09
12 VAC 30-120-2000	Added	25:20 VA.R. 3636	7/9/09
12 VAC 30-120-2010	Added	25:20 VA.R. 3637	7/9/09
12 VAC 30-130-260	Amended	25:14 VA.R. 2626	4/15/09
12 VAC 30-130-270	Amended	25:14 VA.R. 2626	4/15/09
12 VAC 30-130-290	Amended	25:14 VA.R. 2627	4/15/09
12 VAC 30-130-370	Repealed	25:14 VA.R. 2628	4/15/09
12 VAC 30-130-380	Amended	25:14 VA.R. 2628	4/15/09
12 VAC 30-130-410	Repealed	25:14 VA.R. 2628	4/15/09
12 VAC 30-130-540	Amended	25:14 VA.R. 2629	4/15/09
12 VAC 30-130-750	Amended	25:20 VA.R. 3576	7/23/09
12 VAC 30-130-780	Repealed	25:20 VA.R. 3576	7/23/09
12 VAC 30-130-790	Amended	25:20 VA.R. 3576	7/23/09
12 VAC 30-130-800	Amended	25:14 VA.R. 2630	4/15/09
12 VAC 30-130-820	Amended	25:14 VA.R. 2632	4/15/09
12 VAC 30-130-890	Amended	25:14 VA.R. 2633	4/15/09
12 VAC 30-130-910	Amended	25:14 VA.R. 2634	4/15/09
12 VAC 30-141-60	Amended	25:14 VA.R. 2635	4/15/09
12 VAC 30-141-120	Amended	25:14 VA.R. 2635	4/15/09
12 VAC 30-141-660	Amended	25:16 VA.R. 2969	5/13/09
12 VAC 30-141-720	Amended	25:14 VA.R. 2635	4/15/09
12 VAC 30-141-740	Amended	25:19 VA.R. 3411	7/1/09
12 VAC 30-141-760	Amended	25:14 VA.R. 2635	4/15/09
12 VAC 30-150-40	Amended	25:14 VA.R. 2636	4/15/09
12 VAC 35-45-10 through 12 VAC 35-45-210	Repealed	25:21 VA.R. 3912	8/6/09

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12 VAC 35-46-10 through 12 VAC 35-46-1140	Added	25:21 VA.R. 3914-3950	8/6/09
Title 13. Housing			
13 VAC 5-63-220	Amended	25:17 VA.R. 3013	6/1/09
13 VAC 5-100-10	Amended	25:13 VA.R. 2363	2/12/09
13 VAC 5-100-20	Amended	25:13 VA.R. 2364	2/12/09
13 VAC 10-40-20	Amended	25:21 VA.R. 3951	6/5/09
13 VAC 10-40-40	Amended	25:21 VA.R. 3954	6/5/09
13 VAC 10-40-50	Amended	25:21 VA.R. 3954	6/5/09
13 VAC 10-40-120	Amended	25:21 VA.R. 3956	6/5/09
13 VAC 10-40-130	Amended	25:21 VA.R. 3957	6/5/09
13 VAC 10-40-140	Amended	25:21 VA.R. 3960	6/5/09
13 VAC 10-40-160	Amended	25:21 VA.R. 3961	6/5/09
13 VAC 10-40-170	Amended	25:21 VA.R. 3961	6/5/09
13 VAC 10-40-220	Amended	25:21 VA.R. 3961	6/5/09
Title 14. Insurance			
14 VAC 5-43-10	Added	25:19 VA.R. 3413	5/15/09
14 VAC 5-43-20	Added	25:19 VA.R. 3413	5/15/09
14 VAC 5-43-30	Added	25:19 VA.R. 3414	5/15/09
14 VAC 5-170-20	Amended	25:18 VA.R. 3186	5/21/09
14 VAC 5-170-30	Amended	25:18 VA.R. 3186	5/21/09
14 VAC 5-170-50	Amended	25:18 VA.R. 3188	5/21/09
14 VAC 5-170-60	Amended	25:18 VA.R. 3188	5/21/09
14 VAC 5-170-70	Amended	25:18 VA.R. 3190	5/21/09
14 VAC 5-170-75	Added	25:18 VA.R. 3194	5/21/09
14 VAC 5-170-80	Amended	25:18 VA.R. 3196	5/21/09
14 VAC 5-170-85	Added	25:18 VA.R. 3197	5/21/09
14 VAC 5-170-150	Amended	25:18 VA.R. 3199	5/21/09
14 VAC 5-170-215	Added	25:18 VA.R. 3237	5/21/09
Title 16. Labor and Employment			
16 VAC 15-21-30	Amended	25:20 VA.R. 3639	7/24/09
16 VAC 25-90-1910.9	Added	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.95	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.134	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.156	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.303	Amended	25:20 VA.R. 3640	7/15/09
16 VAC 25-90-1910.304	Amended	25:20 VA.R. 3640	7/15/09
16 VAC 25-90-1910.1001	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1003	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1017	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1018	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1025	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1026	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1027	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1028	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1029	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1030	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1043	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1044	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1045	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1047	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1048	Amended	25:20 VA.R. 3639-3640	7/15/09

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16 VAC 25-90-1910.1050	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1051	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1052	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1915.1001	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1915.1026	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-100-1915.9	Added	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-120-1917.5	Added	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-120-1917.71	Amended	25:20 VA.R. 3641	7/15/09
16 VAC 25-130-1918.5	Added	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-130-1918.85	Amended	25:20 VA.R. 3641	7/15/09
16 VAC 25-175-1926.60	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-175-1926.62	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-175-1926.761	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-175-1926.1101	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-175-1926.1126	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-175-1926.1127	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-175-1926.20	Added	25:20 VA.R. 3639-3640	7/15/09
Title 18. Professional and Occupational Licensing			
18 VAC 5-21-30 emer	Amended	25:20 VA.R. 3643	5/14/09-5/13/10
18 VAC 10-20-683	Erratum	25:15 VA.R. 2804	--
18 VAC 30-20-160	Amended	25:20 VA.R. 3656	7/8/09
18 VAC 30-20-185	Added	25:20 VA.R. 3656	7/8/09
18 VAC 48-20-10 through 18 VAC 48-20-800	Added	25:20 VA.R. 3657-3678	7/9/09
18 VAC 48-60-13	Added	25:15 VA.R. 2769	5/15/09
18 VAC 48-60-17	Added	25:15 VA.R. 2769	5/15/09
18 VAC 48-60-20	Amended	25:15 VA.R. 2770	5/15/09
18 VAC 48-60-60	Amended	25:15 VA.R. 2770	5/15/09
18 VAC 60-20-16	Amended	25:17 VA.R. 3015	7/1/09
18 VAC 60-20-190	Amended	25:16 VA.R. 2970	5/13/09
18 VAC 65-20-10	Amended	25:20 VA.R. 3679	7/8/09
18 VAC 65-20-60	Amended	25:17 VA.R. 3016	7/1/09
18 VAC 65-20-60	Amended	25:20 VA.R. 3679	7/8/09
18 VAC 65-20-435	Amended	25:20 VA.R. 3679	7/8/09
18 VAC 65-20-436	Added	25:20 VA.R. 3680	7/8/09
18 VAC 65-30-180	Amended	25:17 VA.R. 3016	7/1/09
18 VAC 76-20-60	Amended	25:16 VA.R. 2971	5/13/09
18 VAC 76-20-70	Amended	25:16 VA.R. 2971	5/13/09
18 VAC 76-40-20	Amended	25:18 VA.R. 3239	7/1/09
18 VAC 90-20-35	Amended	25:17 VA.R. 3017	7/1/09
18 VAC 90-20-36	Amended	25:21 VA.R. 3973	7/22/09
18 VAC 90-25-15	Amended	25:17 VA.R. 3017	7/1/09
18 VAC 90-30-100	Amended	25:17 VA.R. 3017	7/1/09
18 VAC 90-50-20	Amended	25:17 VA.R. 3017	7/1/09
18 VAC 90-60-20	Amended	25:17 VA.R. 3018	7/1/09
18 VAC 90-60-90	Amended	25:16 VA.R. 2972	5/13/09
18 VAC 90-60-91	Added	25:16 VA.R. 2972	5/13/09
18 VAC 90-60-92	Added	25:16 VA.R. 2973	5/13/09
18 VAC 95-20-10	Amended	25:19 VA.R. 3418	6/24/09
18 VAC 95-20-70	Amended	25:19 VA.R. 3420	7/1/09
18 VAC 95-20-175	Amended	25:19 VA.R. 3419	6/24/09
18 VAC 95-20-390	Amended	25:19 VA.R. 3419	6/24/09

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18 VAC 95-30-10	Amended	25:19 VA.R. 3420	6/24/09
18 VAC 95-30-30	Amended	25:19 VA.R. 3420	7/1/09
18 VAC 105-20-60	Amended	25:18 VA.R. 3240	7/1/09
18 VAC 110-20-10 emer	Amended	25:17 VA.R. 3018	4/10/09-4/9/10
18 VAC 110-20-21	Added	25:17 VA.R. 3025	7/1/09
18 VAC 110-20-400 emer	Amended	25:17 VA.R. 3021	4/10/09-4/9/10
18 VAC 110-20-740 emer	Added	25:17 VA.R. 3021	4/10/09-4/9/10
18 VAC 110-20-750 emer	Added	25:17 VA.R. 3021	4/10/09-4/9/10
18 VAC 110-20-760 emer	Added	25:17 VA.R. 3021	4/10/09-4/9/10
18 VAC 110-20-770 emer	Added	25:17 VA.R. 3022	4/10/09-4/9/10
18 VAC 110-20-780 emer	Added	25:17 VA.R. 3022	4/10/09-4/9/10
18 VAC 110-20-790 emer	Added	25:17 VA.R. 3022	4/10/09-4/9/10
18 VAC 110-20-800 emer	Added	25:17 VA.R. 3022	4/10/09-4/9/10
18 VAC 112-20-25	Amended	25:17 VA.R. 3025	7/1/09
18 VAC 112-20-81	Added	25:18 VA.R. 3240	6/10/09
18 VAC 112-20-90	Amended	25:18 VA.R. 3241	6/10/09
18 VAC 112-20-130	Amended	25:18 VA.R. 3241	6/10/09
18 VAC 112-20-131	Amended	25:18 VA.R. 3241	6/10/09
18 VAC 112-20-150	Amended	25:18 VA.R. 3242	6/10/09
18 VAC 115-20-45	Amended	25:20 VA.R. 3704	7/23/09
18 VAC 115-20-130	Amended	25:20 VA.R. 3704	7/23/09
18 VAC 115-50-40	Amended	25:20 VA.R. 3706	7/23/09
18 VAC 115-50-110	Amended	25:20 VA.R. 3706	7/23/09
18 VAC 115-60-50	Amended	25:20 VA.R. 3708	7/23/09
18 VAC 115-60-130	Amended	25:20 VA.R. 3709	7/23/09
18 VAC 120-40-15	Amended	25:15 VA.R. 2774	5/14/09
18 VAC 120-40-85	Added	25:15 VA.R. 2774	5/14/09
18 VAC 120-40-240	Amended	25:15 VA.R. 2774	5/14/09
18 VAC 120-40-411.1	Amended	25:15 VA.R. 2775	5/14/09
18 VAC 125-20-120	Amended	25:17 VA.R. 3026	7/1/09
18 VAC 125-30-50	Amended	25:20 VA.R. 3711	7/8/09
18 VAC 125-30-80	Amended	25:17 VA.R. 3026	7/1/09
18 VAC 125-30-80	Amended	25:20 VA.R. 3712	7/8/09
18 VAC 130-20-30	Erratum	25:15 VA.R. 2804	--
18 VAC 140-20-100	Amended	25:18 VA.R. 3247	7/1/09
18 VAC 160-20-10	Amended	25:19 VA.R. 3421	7/1/09
18 VAC 160-20-74	Amended	25:19 VA.R. 3424	7/1/09
18 VAC 160-20-76	Amended	25:19 VA.R. 3424	7/1/09
18 VAC 160-20-80	Amended	25:19 VA.R. 3425	7/1/09
18 VAC 160-20-82	Added	25:19 VA.R. 3425	7/1/09
18 VAC 160-20-84	Added	25:19 VA.R. 3426	7/1/09
18 VAC 160-20-90	Amended	25:19 VA.R. 3427	7/1/09
18 VAC 160-20-94	Added	25:19 VA.R. 3429	7/1/09
18 VAC 160-20-96	Added	25:19 VA.R. 3430	7/1/09
18 VAC 160-20-97	Added	25:19 VA.R. 3431	7/1/09
18 VAC 160-20-98	Added	25:19 VA.R. 3432	7/1/09
18 VAC 160-20-102	Amended	25:19 VA.R. 3433	7/1/09
18 VAC 160-20-104	Amended	25:19 VA.R. 3433	7/1/09
18 VAC 160-20-106	Amended	25:19 VA.R. 3433	7/1/09
18 VAC 160-20-109	Amended	25:19 VA.R. 3434	7/1/09
18 VAC 160-20-140	Amended	25:19 VA.R. 3435	7/1/09

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 160-20-145	Added	25:19 VA.R. 3435	7/1/09
18 VAC 160-20-150	Amended	25:19 VA.R. 3436	7/1/09
Title 20. Public Utilities and Telecommunications			
20 VAC 5-314-10 through 20 VAC 5-314-170	Added	25:20 VA.R. 3716-3758	5/21/09
Title 22. Social Services			
22 VAC 30-40-10 through 22 VAC 30-40-150	Amended	25:21 VA.R. 3973-3984	7/22/09
22 VAC 30-40-160	Added	25:21 VA.R. 3984	7/22/09
22 VAC 40-35-5	Repealed	25:19 VA.R. 3438	7/1/09
22 VAC 40-35-10	Amended	25:19 VA.R. 3438	7/1/09
22 VAC 40-35-20	Amended	25:19 VA.R. 3440	7/1/09
22 VAC 40-35-40 through 22 VAC 40-35-120	Amended	25:19 VA.R. 3441-3446	7/1/09
22 VAC 40-35-125	Repealed	25:19 VA.R. 3446	7/1/09
22 VAC 40-35-126	Repealed	25:19 VA.R. 3446	7/1/09
22 VAC 40-35-127	Repealed	25:19 VA.R. 3447	7/1/09
22 VAC 40-35-128	Repealed	25:19 VA.R. 3447	7/1/09
22 VAC 40-35-130	Amended	25:19 VA.R. 3447	7/1/09
22 VAC 40-72-10	Amended	25:19 VA.R. 3448	8/1/09
22 VAC 40-72-160	Amended	25:19 VA.R. 3453	8/1/09
22 VAC 40-72-210	Amended	25:19 VA.R. 3453	8/1/09
22 VAC 40-72-660	Amended	25:19 VA.R. 3454	8/1/09
22 VAC 40-72-670	Amended	25:19 VA.R. 3455	8/1/09
22 VAC 40-170-10 through 22 VAC 40-170-230	Repealed	25:19 VA.R. 3456	7/1/09
22 VAC 40-670-10	Amended	25:21 VA.R. 3988	8/6/09
22 VAC 40-670-20	Amended	25:21 VA.R. 3988	8/6/09
22 VAC 40-675-10	Amended	25:21 VA.R. 3990	8/6/09
22 VAC 40-675-60 through 22 VAC 40-675-100	Amended	25:21 VA.R. 3990-3991	8/6/09
Title 24. Transportation and Motor Vehicles			
24 VAC 30-92-10 through 24 VAC 30-92-150	Added	25:15 VA.R. 2777-2801	3/9/09
24 VAC 30-280-20 through 24 VAC 30-280-70	Repealed	25:19 VA.R. 3456	7/1/09
24 VAC 30-281-10	Added	25:19 VA.R. 3457	7/1/09
24 VAC 30-300-10	Repealed	25:19 VA.R. 3457	4/29/09
24 VAC 30-301-10	Added	25:19 VA.R. 3458	4/29/09
24 VAC 30-301-20	Added	25:19 VA.R. 3458	4/29/09

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Agency Decision

Title of Regulation: **18VAC60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene.**

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

Name of Petitioner: Len Futerman.

Nature of Petitioner's Request: To amend regulations for anesthesia in dental offices for consistency with guidelines of the American Dental Association, as amended in October of 2007.

Agency Decision: Request denied.

Statement of Reasons for Decision: At the meeting, the board concluded that current regulations are adequate to protect the public and that any changes to the sedation and anesthesia regulations should be addressed in the regulatory review process currently underway. The Virginia Association of Nurse Anesthetists had commented on the petition and suggested that changes in response to the petition would be confusing in the current review process.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R09-12; Filed June 16, 2009, 3:32 p.m.

BOARD OF PHARMACY

Agency Decision

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy.**

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

Name of Petitioner: Eric D. Hampton.

Nature of Petitioner's Request: Amend regulations pertaining to automated devices for dispensing and administration of drugs to use the activity reports rather than having a nurse or other licensed person sign for the delivery.

Agency Decision: Request granted.

Statement of Reasons for Decision: The board will publish a Notice of Intended Regulatory Action to receive additional comment on the proposal and consider amending its regulation.

Agency Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 662-9911, FAX (804) 662-9313, or email scotti.russell@dhp.virginia.gov.

VA.R. Doc. No. R09-14; Filed June 17, 2009, 11:06 a.m.

BOARD OF COUNSELING

Agency Decision

Titles of Regulations: **18VAC115-20. Regulations Governing Licensed Professional Counselors.**

18VAC115-50. Regulations Governing Marriage and Family Therapists.

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

Name of Petitioner: Dr. Roy Woodruff.

Nature of Petitioner's Request: To amend regulations to recognize the American Association of Pastoral Counselors as a professional organization that can provide education and training required to qualify a licensee as a supervisor of residents.

Agency Decision: Request granted.

Statement of Reasons for Decision: On June 5, 2009, the board acted in favor of the petition provided there was no negative comment during the comment period that ended on June 10. The board decided to promulgate the amendments in a fast-track action since there is no controversy expected and the changes will provide licensees and supervisors with additional options for continuing education and training.

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

VA.R. Doc. No. R09-22; Filed June 15, 2009, 2:16 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF MINES, MINERALS AND ENERGY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to consider amending the following regulations: **4VAC25-31, Reclamation Regulations for Mineral Mining.** The purpose of the proposed action is to facilitate the use of electronic permitting and forms, clarify reclamation and postmining land use requirements, and expand the types of financial instruments that can be used for performance bonds. Miscellaneous obsolete items, such as addresses that have changed, will be updated. These amendments are needed to keep the regulation current, accurate, and clear.

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

Statutory Authority: §§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

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

Agency Contact: David Spears, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email david.spears@dmme.virginia.gov.

VA.R. Doc. No. R09-1913; Filed June 17, 2009, 10:43 a.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Criminal Justice Services Board has WITHDRAWN the Notice of Intended Regulatory Action for **6VAC20-20, Rules Relating to Compulsory Minimum Training Standards for Law-Enforcement Officers**, that was published in 18:1 VA.R. 16 September 24, 2001.

Agency Contact: Judith Kirkendall, Regulatory Coordinator, Department of Criminal Justice Services, 1100 Bank Street, 12th Floor, Richmond, VA 23219, telephone (804) 786-8003, FAX (804) 225-3853, or email judith.kirkendall@dcjs.virginia.gov.

VA.R. Doc. No. R02-1; Filed June 16, 2009, 2:02 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Criminal Justice Services Board intends to consider amending the following regulations: **6VAC20-60, Rules Relating to Compulsory Minimum Training Standards for Dispatchers.** The purpose of the proposed action is to transfer approval authority for changes to the performance outcome statement of the standard from the board to its standing Committee on Training and update several on-the-job training performance outcomes based on a recent review.

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

Statutory Authority: § 9.1-102 of the Code of Virginia.

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

Agency Contact: Judith Kirkendall, Regulatory Coordinator, Department of Criminal Justice Services, 1100 Bank Street, 12th Floor, Richmond, VA 23219, telephone (804) 786-8003, FAX (804) 225-3853, or email judith.kirkendall@dcjs.virginia.gov.

VA.R. Doc. No. R09-1887; Filed June 3, 2009, 2:24 p.m.

TITLE 9. ENVIRONMENT

STATE WATER 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 State Water Control Board intends to consider amending the following regulations: **9VAC25-600, Eastern Virginia Ground Water Management Area.** The purpose of the proposed action is to expand the Eastern Virginia Ground Water Management Area to include the remaining portion of Virginia's coastal plain.

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

Statutory Authority: § 62.1-256 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on August 19, 2009.

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4234, FAX (804) 698-4346, or email melissa.porterfield@deq.virginia.gov.

VA.R. Doc. No. R09-1782; Filed June 16, 2009, 3:33 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending the following regulations: **9VAC25-610, Ground Water Withdrawal Regulations.** The purpose of the proposed action is to address the increasing demand on limited groundwater resources, changes to the administrative review process, and regulatory changes necessitated by new information on the coastal plain aquifer system.

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

Statutory Authority: § 62.1-256 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on August 19, 2009.

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4346, or email melissa.porterfield@deq.virginia.gov.

VA.R. Doc. No. R09-1781; Filed June 16, 2009, 3:35 p.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending the following regulations: **12VAC30-50, Amount, Duration, and Scope of Medical and Remedial Care Services.** The purpose of the proposed action is to provide for new prior authorizations for certain community mental health services.

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

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

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

Agency Contact: Catherine Hancock, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4272, FAX (804) 786-1650, or email catherine.hancock@dmas.virginia.gov.

VA.R. Doc. No. R09-1937; Filed June 17, 2009, 11:34 a.m.

TITLE 23. TAXATION

DEPARTMENT OF TAXATION

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Department of Taxation has WITHDRAWN the Notice of Intended Regulatory Action for 23VAC10-210, Retail Sales and Use Tax, that was published in 23:7 VA.R. 1040 December 11, 2006. This action, which related to exempt tangible personal property that is purchased by churches for use in recording and reproducing religious worship services, is withdrawn because the Department of Taxation has determined that the changes are appropriate for promulgating using the fast-track rulemaking process established in § 2.2-4012.1 of the Administrative Process Act.

Agency Contact: Todd Gathje, Analyst, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2301, FAX (804) 371-2355, or email todd.gathje@tax.virginia.gov.

VA.R. Doc. No. R07-48; Filed June 15, 2009, 4:30 p.m.

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Proposed Regulation

Titles of Regulations: **3VAC5-20. Advertising (amending 3VAC5-20-10 through 3VAC5-20-40, 3VAC5-20-60, 3VAC5-20-90, 3VAC5-20-100; repealing 3VAC5-20-50, 3VAC5-20-70, 3VAC5-20-80).**

3VAC5-30. Tied-House (amending 3VAC5-30-10, 3VAC5-30-20, 3VAC5-30-30, 3VAC5-30-60; adding 3VAC5-30-80).

Statutory Authority: §§ 4.1-111 and 4.1-320 of the Code of Virginia.

Public Hearing Information:

August 24, 2009 - 10 a.m. - Department of Alcoholic Beverage Control, 2901 Hermitage Road, Hearing Room, Richmond, VA

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

Basis: Title 4.1 of the Code of Virginia gives the Alcoholic Beverage Control Board general authority to regulate the manufacture, distribution, and sale of alcoholic beverages within the Commonwealth, including the authority to promulgate regulations that it deems necessary to carry out the provisions of Title 4.1, in accordance with the Administrative Process Act. Section 4.1-320 generally prohibits alcoholic beverage advertising in Virginia, except in accordance with board regulations. Subdivision B 3 of § 4.1-111 requires that the board promulgate regulations that maintain the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, importers, and wholesalers; prevent undue competitive domination of any person by any other person engaged in the manufacture, distribution, and sale at retail or wholesale of alcoholic beverages in the Commonwealth; and promote reasonable accommodation of arm's length business transactions. The Code of Virginia mandates that the board promulgate regulations, but details are left to the board's discretion.

Purpose: The purpose of the proposed action is to develop amendments that conform the board's advertising and tied-house regulations to statutory amendments enacted by the 2007 General Assembly; reorganize the advertising and tied-house chapters; and eliminate or modernize outdated provisions. These amendments will protect the health, safety, or welfare of citizens by maintaining reasonable restrictions on alcoholic beverage promotion and maintaining a reasonable separation between the manufacturing, wholesaling, and retail interests to help ensure temperance, while allowing industry members additional ability to market their products.

Substance: In 3VAC5-20-10, subsection B, prohibiting cooperative advertising, is moved to 3VAC5-30, Tied-House. In the same section, subdivision E 2 is amended to delete the terms "lewd" and "indecent," and subdivision E 4 is amended to eliminate references to curative or therapeutic claims, or claims disparaging to a competitor's product.

3VAC5-20-20 is rewritten to eliminate the distinction between permanent and nonpermanent point-of-sale materials, and to allow retail establishments to use all but illuminated point-of-sale materials inside their establishments. Current restrictions on the provision of such materials by industry members will be moved to 3VAC5-30, Tied-House. These provisions will be revised to conform to recent General Assembly action.

3VAC5-20-30 is rewritten to eliminate specific language restrictions on exterior advertising signs at licensed retail establishments.

In 3VAC5-20-40, restrictions on specific language in alcoholic beverage advertising contained in subdivisions A 1, A 2, A 3, and B 3 is eliminated, and the limit on the percentage of advertising space that may be occupied by the identification of the sponsor in moderation messages in college student publications currently in subdivision B 5 is eliminated. The section is revised to apply to all types of alcoholic beverages, and defines the term "electronic media."

3VAC5-20-50 is repealed.

Subdivision 2 of 3VAC5-20-60 is amended to allow the display of novelty and specialty items on retail premises, and to allow such items to be given to patrons during tasting events. Subdivision 6 is amended to allow wholesalers to put order blanks for novelty and specialty items on packages.

3VAC5-20-70 and 3VAC5-20-80 are repealed.

3VAC5-20-90 is amended to allow coupons to be distributed on the Internet, and to allow beer wholesalers to affix manufacturers' coupons to the package.

3VAC5-20-100 is amended to allow sponsorship of public events by wholesalers.

3VAC5-30-10 B 2 is amended to allow wholesalers to affix prices to products they have sold to a retailer.

The last sentence of 3VAC5-30-20 is amended to add farm wineries to the exemptions from the provisions of this section.

3VAC5-30-30 B, the definition of "cash," is expanded to include payments by credit or debit cards.

3VAC5-30-60 D, the wholesale value of bottle or can openers that may be given by a manufacturer, bottler, or wholesaler to a retailer, is increased to $20.

In 3VAC5-30-60 F, wine glasses upon which advertising matter regarding wine may appear are added to the items that a manufacturer or wholesaler could sell at reasonable wholesale price to banquet licensees.

A new section 3VAC5-30-80 is also added, moving to this chapter current restrictions on the provision of various advertising items presently contained in the advertising regulation, 3VAC5-20.

Issues: The regulatory action poses no disadvantages to the public or the Commonwealth. The primary advantages to the public and the agency are the simplification of alcohol advertising and tied house regulations by the more logical organization of the provisions and removal of unnecessary or outdated regulations.

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

Summary of the Proposed Amendments to Regulation. The Alcoholic Beverage Control Board (ABC) proposes to amend its regulations governing advertising of alcoholic beverages and its tied house regulations. Specifically, ABC proposes to repeal or loosen certain restrictions on advertising, move other restrictions on advertising from one set of these regulations to a more appropriate section in the other and update the regulatory definition of advertising to account for types of advertising that were not widely used in 1994 when these regulations were last fully reviewed. ABC also proposes to consolidate rules for advertising of all alcoholic beverages into one regulatory section instead of having rules for advertising beer, wine and mixed alcoholic beverages separated from rules for advertising distilled spirits.

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

Estimated Economic Impact. Current regulations prohibit advertising that implies the advertised product has medicinal properties and advertising that disparages a competitor's product. Current regulations also prohibit retailers of alcoholic beverages from displaying any permanent advertising on their premises and place a host of restrictions on the non-permanent advertising displayed. Any advertising on canvas, for instance, is currently restricted to banners. Any advertising, whatever the material, must currently be only two dimensional. Additionally, current regulations restrict certain words (Bar Room, Speakeasy, etc.) from being used in advertising unless they are part of the advertising entity's trade name. Other words (mixed drinks, Polynesian Drinks, etc) are prescribed as the only words that may be used in advertising to describe mixed alcoholic beverages. In advertising advocating for responsible drinking, the name, address and logo of the advertising's sponsor currently may not take up more than 10% of the advertising space. Wholesalers may not currently affix order forms to their products nor may they affix coupons to beer packages.

All of these restrictions are being eliminated so that licensees may advertise in any manner they choose, with one exception, so long as it does not violate restrictions in statute or other regulations. The one exception is that advertising in retail establishments may not be illuminated (neon or other lighting). These regulatory changes will allow retail establishments, manufacturers, and wholesalers greater freedom to advertise in the manner that they believe will most benefit them. If additional or different types of advertising are more effective, sales for affected retailers, manufacturers and wholesalers may increase. If additional revenue exceeds additional costs for advertising, these licensees may earn additional profits.

Current regulations allow manufacturers, wholesalers, importers or bottlers, or their representatives, to give promotional items (like t-shirts) to retailers so long as these items' retail value does not exceed $10, only one item per retailer and employee is given per visit, these items are not displayed in the retail premises and these items are not given to customers.

ABC proposes to ease these restrictions so that they conform to § 4.1-201 of the Code of Virginia. Under these proposed regulations (and statutory language), manufacturers, wholesalers, importers or bottlers, or their representatives, may give away promotional items that do not exceed $10 in value to each employee present at a retail establishment at the time the items are delivered. Additionally, manufacturers, wholesalers, importers or bottlers, or their representatives, may give away promotional items to customers at product tastings held pursuant to Code of Virginia § 4.1-201.1 so long as only one items is given to each person also given a tasting sample. Since all entities affected by these rules are already subject to the underlying statutory restrictions, no licensee or member of the public is likely to incur costs on account of these proposed regulatory changes. These entities will benefit, however, from the regulations being brought into conformity

with statutory provisions since any conflicts in the rules that might have been confusing will be eliminated.

Businesses and Entities Affected. These proposed regulations will affect all manufacturers, wholesalers and retailers of alcoholic beverages. ABC reports that there are approximately 14,000 such businesses in the Commonwealth; ABC further reports that more than 95% of these meet the definition of a small business.

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

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

Effects on the Use and Value of Private Property. To the extent that easing advertising restrictions increases profits for affected licensees, the value of their businesses will increase on account of this regulatory action.

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action. This action will allow manufacturers, wholesalers and retailers of alcoholic beverages greater flexibility to choose different mediums of advertising for their wares.

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

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Alcoholic Beverage Control Board concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

This action proposes several changes to the regulations governing the advertising of alcoholic beverages, as well as to the tied-house regulations, designed to maintain a reasonable separation between manufacturing and wholesaling interests and retailers of alcoholic beverages. Several outdated advertising regulations will be repealed. Others will be modified to conform to statutory changes or to modernize them. The two chapters will be reorganized, moving some provisions dealing with limitations on the provision of advertising materials by manufacturers or wholesalers to retailers from the advertising chapter to the chapter dealing with tied-house restrictions.

3VAC5-20-10. Advertising; generally; cooperative advertising; federal laws; cider; restrictions.

A. All alcoholic beverage advertising is permitted in this Commonwealth except that which is prohibited or otherwise limited or restricted by regulation of the board and such advertising shall not be blatant or obtrusive. Any editorial or other reading matter in any periodical, publication or newspaper for the publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by or for the benefits of any permittee or licensee does not constitute advertising.

~~B. There shall be no cooperative advertising as between a producer, manufacturer, bottler, importer or wholesaler and a retailer of alcoholic beverages, except as may be authorized by regulation pursuant to § 4.1-216 of the Code of Virginia. The term "cooperative advertising" shall mean the payment or credit, directly or indirectly, by any manufacturer, bottler, importer or wholesaler whether licensed in this Commonwealth or not to a retailer for all or any portion of advertising done by the retailer.~~

~~C.~~ B. Advertising of cider, as defined in § 4.1-213 of the Code of Virginia, shall conform ~~with~~ to the requirements for advertising beer.

~~D.~~ C. The board may issue a permit authorizing a variance from any of its advertising regulations for good cause shown.

~~E.~~ D. No advertising shall contain any statement, symbol, depiction or reference that:

1. Would tend to induce minors to drink, or would tend to induce persons to consume to excess;

2. Is ~~lewd,~~ obscene ~~or indecent~~ or is suggestive of any illegal activity;

3. Incorporates the use of any present or former athlete or athletic team or implies that the product enhances athletic prowess; except that, persons granted a license to sell wine or beer may display within their licensed premises point-of-sale advertising materials that incorporate the use of any professional athlete or athletic team, provided that such advertising materials: (i) otherwise comply with the applicable regulations of the Federal Bureau of Alcohol, Tobacco and Firearms and (ii) do not depict any athlete consuming or about to consume alcohol prior to or while engaged in an athletic activity, do not depict an athlete consuming alcohol while the athlete is operating or about to operate a motor vehicle or other machinery, and do not imply that the alcoholic beverage so advertised enhances athletic prowess;

4. Is false or misleading in any material respect~~, or implies that the product has a curative or therapeutic effect, or is disparaging of a competitor's product~~;

5. Implies or indicates, directly or indirectly, that the product is government endorsed by the use of flags, seals or other insignia or otherwise;

6. Makes any reference to the intoxicating effect of any alcoholic beverages;

7. Constitutes or contains a contest or sweepstakes where a purchase is required for participation; or

8. Constitutes or contains an offer to pay or provide anything of value conditioned on the purchase of alcoholic beverages, except for refund coupons and combination packaging for wine. Any such combination packaging shall be limited to packaging provided by the manufacturer that is designed to be delivered intact to the consumer.

~~F.~~ E. The board shall not regulate advertising of nonalcoholic beer or nonalcoholic wine so long as (i) a reasonable person by common observation would conclude that the advertising clearly does not represent any advertisement for alcoholic beverages and (ii) the advertising prominently states that the product is nonalcoholic.

3VAC5-20-20. Advertising; interior; retail licensees.

A. As used in this section, the term "advertising materials" means any tangible property of any kind which utilizes words or symbols making reference to any brand or manufacturer of alcoholic beverages; except when used in the advertisement of nonalcoholic beer or nonalcoholic wine in accordance with 3VAC5-20-10 ~~F~~ E.

~~B. The use of advertising materials inside licensed retail establishments shall be subject to the following provisions:~~

~~1.~~ B. Retail licensees may use any ~~nonpermanent~~ nonilluminated advertising ~~material which is neither designed as, nor functions as, permanent point-of-sale advertising material including, but not limited to, nonmechanical advertising material consisting of printed matter appearing on paper, cardboard, canvas or plastic stock; however, canvas advertising materials shall be restricted to fabric banners containing only two-dimensional display surfaces and plastic advertising materials shall be restricted to (i) thin sheets or strips containing only two-dimensional display surfaces or (ii) any inflatable plastic items not in excess of $5.00 in wholesale value. Such advertising materials may be obtained by such retailers from any source, including manufacturers, bottlers and wholesalers of alcoholic beverages who may sell, lend, buy for or give to such retailers such advertising materials; provided, however, that nonpermanent advertising material referring to any brand or manufacturer of spirits may only be provided to mixed beverage licensees and may not be provided by beer and wine wholesalers, or their employees, unless they hold a spirits solicitor's permit;~~ materials having a wholesale value of not more than $250 per item that comply with 3VAC5-20-10 inside licensed retail establishments.

~~2. Retail on-premises and on-and-off premises licensees may use any mechanical or illuminated devices which are designed or manufactured to serve as permanent point-of-sale advertising. Such advertising devices may be obtained and displayed by retailers provided that any such devices do not make reference to brands of alcoholic beverages offered for sale in such retail establishment or to brands or the name of any manufacturer whose alcoholic beverage products are offered for sale in such retail establishment and, provided further, that such advertising materials are not supplied, installed, maintained or otherwise serviced by any manufacturers, bottlers or wholesalers of alcoholic beverages, and that no such advertising relating to spirits shall be authorized in an establishment not licensed to sell mixed beverages;~~

~~3. Notwithstanding subdivision B 2, retail licensees may display any permanent point-of-sale advertising pertaining to nonalcoholic beer or nonalcoholic wine. Any such brand of nonalcoholic beer or nonalcoholic wine may be offered for sale in the retail establishment. Such permanent point-of-sale advertising may not be supplied, installed, maintained or otherwise serviced by any manufacturer, bottler or wholesaler of alcoholic beverages;~~

~~4. Advertising materials described in the following categories may be displayed inside a retail establishment by a retail licensee provided that any conditions or limitations stated in regard to a given category of advertising materials are observed:~~

~~a. Advertising materials, including those promoting responsible drinking or moderation in drinking, consisting of printed matter appearing on paper,~~

~~cardboard, canvas or plastic stock supplied by any manufacturer, bottler or wholesaler of alcoholic beverages in accordance with this section provided, however, that nonpermanent advertising materials referring to any brand or manufacturer of spirits may only be provided to mixed beverage licensees and may not be provided by beer and wine wholesalers or their employees unless they hold a spirits solicitor's permit;~~

~~b. Works of art so long as they are not supplied by manufacturers, bottlers or wholesalers of alcoholic beverages;~~

~~c. Materials displayed in connection with the sale of over the counter novelty and specialty items in accordance with 3VAC5-20-60;~~

~~d. Materials used in connection with the sponsorship of public events shall be limited to sponsorship of conservation and environmental programs, professional, semiprofessional or amateur athletic and sporting events, and events of a charitable or cultural nature by distilleries, wineries and breweries, subject to 3VAC5-20-100 B;~~

~~e. Service items such as placemats, coasters and glasses so long as they are not supplied by manufacturers, bottlers or wholesalers of alcoholic beverages; however, manufacturers, bottlers or wholesalers may supply to retailers napkins, placemats and coasters which contain (i) a reference to the name of a brand of nonalcoholic beer or nonalcoholic wine as permitted under 3VAC5-20-10 F, or (ii) a message relating solely to and promoting moderation and responsible drinking, which message may contain the name, logo and address of the sponsoring manufacturer, bottler or wholesaler, provided such recognition is subordinate to the message, occupies no more than 10% of the space, and contains no reference to or pictures of the sponsor's brand or brands;~~

~~f. Draft beer and wine knobs, spirits back bar pedestals, bottle or can openers, beer, wine and spirits clip-ons and table tents, subject to 3VAC5-30-60;~~

~~g. Beer and wine "neckers," recipe booklets, brochures relating to the wine manufacturing process, vineyard geography and history of a wine manufacturing area; and point of sale entry blanks relating to contests and sweepstakes may be provided by beer and wine wholesalers to retail licensees for use on retail premises, if such items are offered to all retail licensees equally, and the wholesaler has obtained the consent, which may be a continuing consent, of each retailer or his representative. Wholesale licensees in the Commonwealth may not put entry blanks on the package; and~~

~~h. Refund coupons, if they are supplied, displayed and used in accordance with 3VAC5-20-90.~~

~~C. No manufacturer, bottler, wholesaler or importer of alcoholic beverages, whether licensed in this Commonwealth or not, may directly or indirectly sell, rent, lend, buy for, or give to any retailer any advertising materials, decorations or furnishings under any circumstances otherwise prohibited by law, nor may any retailer induce, attempt to induce, or consent to any such supplier of alcoholic beverages furnishing such retailer any such advertising.~~

~~D. Any advertising materials provided for herein, which may have been obtained by any retail licensee from any manufacturer, bottler or wholesaler of alcoholic beverages, may be installed in the interior of the licensed establishment by any such manufacturer, bottler or wholesaler using any normal and customary installation materials, provided no such materials are installed or displayed in exterior windows or within the interior of the retail establishment in such a manner that such advertising materials may be viewed from the exterior of the retail premises. With the consent of the retail licensee, which consent may be a continuing consent, wholesalers may mark or affix retail prices on these materials.~~

~~E. Every retail licensee who, pursuant to subdivisions B 2 or B 3, obtains any permanent point of sale advertising shall keep a complete, accurate and separate record of all such material obtained. Such records shall show: (i) the name and address of the person from whom obtained; (ii) the date furnished; (iii) the item furnished; and (iv) the price charged therefor. All such records, invoices and accounts shall be kept by each such licensee at the place designated in the license for a period of two years and shall be available for inspection and copying by any member of the board or its special agents during reasonable hours.~~

3VAC5-20-30. Advertising; exterior~~; signs; vehicles; uniforms~~.

Outdoor alcoholic beverage advertising shall comply with 3VAC5-20-10, be limited to signs and is otherwise discretionary, except as follows:

1. Manufacturers and wholesalers, including wineries and farm wineries:

a. No more than one sign upon the licensed premises, no portion of which may be higher than 30 feet above ground level on a wholesaler's premises;

b. No more than two signs, which must be directional in nature, not farther than ~~½~~ 1/2 mile from the licensed establishment limited in dimension to 64 square feet with advertising limited to brand names;

c. If the establishment is a winery also holding a retail off-premises winery license or is a farm winery, additional directional signs with advertising limited to trade names, brand names, the terms "farm winery" or "winery," and tour information, may be erected in

accordance with state and local rules, regulations and ordinances; and

d. Only on vehicles and uniforms of persons employed exclusively in the business of a manufacturer or wholesaler, which shall include any antique vehicles bearing original or restored alcoholic beverage advertising used for promotional purposes. Additionally, any person whether licensed in this Commonwealth or not, may use and display antique vehicles bearing original or restored alcoholic beverage advertising.

2. Retailers, including mixed beverage licensees, other than carriers and clubs:

a. No more than two signs at the establishment and, in the case of establishments at intersections, three signs, the advertising on which, including symbols approved by the United States Department of Transportation relating to alcoholic beverages, shall be limited to 12 inches in height or width and not animated and, in the case of signs remote from the premises, subordinate to the main theme and substantially in conformance with the size and content of advertisements of other services offered at the establishment; ~~and~~

b. ~~Limited only to words and terms appearing on the face of the license describing the privileges of the license and, where applicable: "Mixed Drinks," "Mixed Beverages," "Cocktails," "Exotic Drinks," "Polynesian Drinks," "Cocktail Lounge," "Liquor," "Spirits," and not including~~ Signs may not include any reference to or depiction of ~~"Bar Room," "Saloon," "Speakeasy,"~~ "Happy Hour," or references or depictions of similar import, ~~nor to prices of alcoholic beverages,~~ including references to "special" or "reduced" prices or similar terms when used as inducements to purchase or consume alcoholic beverages ~~Notwithstanding the above, the terms "Bar," "Bar Room," "Saloon," and "Speakeasy" may be used in combination with other words that connote a restaurant as part of the retail licensee's trade name~~; and

c. No advertising of alcoholic beverages may be displayed in exterior windows or within the interior of the retail establishment in such a manner that such advertising materials may be viewed from the exterior of the retail premises, except on table menus or newspaper tear sheets.

3. Manufacturers, wholesalers and retailers may engage in billboard advertising within stadia, coliseums or racetracks that are used primarily for professional or semiprofessional athletic or sporting events.

3VAC5-20-40. Advertising; ~~newspaper, magazines, radio, television, trade publications, etc~~ print and electronic media.

A. ~~Beer, wine and mixed~~ Alcoholic beverage advertising in the print or electronic media is permitted with the following ~~exceptions~~ requirements and conditions:

~~1. All references to mixed beverages are prohibited except the following: "Mixed Drinks," "Mixed Beverages," "Exotic Drinks," "Polynesian Drinks," "Cocktails," "Cocktail Lounges," "Liquor" and "Spirits";~~

~~2. The following terms or depictions thereof are prohibited unless they are used in combination with other words that connote a restaurant and they are part of the licensee's trade name: "Bar," "Bar Room," "Saloon," "Speakeasy," or references or depictions of similar import; and~~

~~3. Any references to "Happy Hour" or similar terms are prohibited.~~

~~B. Further requirements and conditions are as follows~~:

1. All alcoholic beverage advertising shall include the name and address (street address optional) of the responsible advertiser~~;~~.

~~2. Advertising placed by a manufacturer, bottler or wholesaler in trade publications of associations of retail licensees or college publications shall not constitute cooperative advertising;~~

~~3.~~ 2. Advertisements of ~~beer, wine and mixed~~ alcoholic beverages are not allowed in college student publications unless in reference to a dining establishment, except as provided below. A "college student publication" is defined as any college or university publication that is prepared, edited or published primarily by students at such institution, is sanctioned as a curricular or extra-curricular activity by such institution and which is distributed or intended to be distributed primarily to persons under 21 years of age.

~~Advertising of beer, wine and mixed beverages by a dining establishment in college student publications shall not contain any reference to particular brands or prices and shall be limited only to the use of the following words: "A.B.C. on-premises," "beer," "wine," "mixed beverages," "cocktails," or any combination of these words; and~~

~~4.~~ 3. Advertisements of ~~beer, wine and mixed~~ alcoholic beverages are prohibited in publications not of general circulation which are distributed or intended to be distributed primarily to persons under 21 years of age, except in reference to a dining establishment as provided in subdivision 3; notwithstanding the above mentioned provisions, all advertisements of ~~beer, wine and mixed~~ alcoholic beverages are prohibited in publications

distributed or intended to be distributed primarily to a high school or younger age level.

~~5.~~ 4. Notwithstanding the provisions of this or any other regulation of the board pertaining to advertising, a manufacturer, bottler or wholesaler of alcoholic beverages may place an advertisement in a college student publication which is distributed or intended to be distributed primarily to persons over 18 and under 21 years of age which has a message relating solely to and promoting public health, safety and welfare, including, but not limited to, moderation and responsible drinking messages, anti-drug use messages and driving under the influence warnings. Such advertisement may contain the name, logo and address of the sponsoring industry member, provided such recognition is at the bottom of and subordinate to the message~~, occupies no more than 10% of the advertising space,~~ and contains no ~~reference to or~~ pictures of the sponsor's ~~brand or brands, mixed drinks, or exterior signs~~ product. Any public service advertisement involving alcoholic beverages shall contain a statement specifying the legal drinking age in the Commonwealth.

B. As used in the section, "electronic media" shall mean any system involving the transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, television, electromagnetic, photo-electronic, or photo-optical system, including, but not limited to, radio, television, electronic mail, and the Internet.

3VAC5-20-50. ~~Advertising; newspapers and magazines; programs; spirits.~~ (Repealed.)

~~A. Except as provided in subsection B, alcoholic beverage advertising of products greater than 14% alcohol by manufacturers, bottlers, importers or wholesalers via the media shall be limited to newspapers and magazines of general circulation, or similar publications of general circulation, and to printed programs relating to professional, semi-professional and amateur athletic and sporting events, conservation and environmental programs and for events of a charitable or cultural nature, subject to the following conditions:~~

~~1. Required statements:~~

~~a. Name and address (street address optional) of the responsible advertiser.~~

~~b. Contents of the product advertised in accordance with all labeling requirements. If only the class of spirits or wine, such as "whiskey" or "chardonnay" is referred to, statements as to contents may be omitted.~~

~~c. Any written, printed or graphic advertisement shall be in lettering or type size sufficient to be conspicuous and readily legible.~~

~~2. Prohibited statement. Any reference to a spirit's price that is not the prevailing price at government stores, excepting references approved in advance by the board relating to temporarily discounted prices.~~

~~3. Further limitation. Spirits may not be advertised in college student publications as defined in 3VAC5-20-40 B nor in newspapers, programs or other written or pictorial matter primarily relating to intercollegiate athletic events.~~

~~B. Electronic advertising of alcoholic beverages containing more than 14% alcohol but less than 22% alcohol shall be permitted as long as it emphasizes that such alcoholic beverages are traditionally served with meals or immediately before or following a meal.~~

3VAC5-20-60. Advertising; novelties and specialties.

Distribution of novelty and specialty items, including wearing apparel, bearing alcoholic beverage advertising, shall be subject to the following limitations and conditions:

1. Items not in excess of $10 in wholesale value may be given away;

2. Manufacturers, importers, bottlers, brokers, wholesalers or their representatives may give licensed retailers items not in excess of $10 in wholesale value~~, limited to one item per retailer, and one item per employee, per visit, which may not be displayed~~ in quantities equal to the number of employees of the retail establishment present at the time the items are delivered. Thereafter, such employees may wear or display the items on the licensed premises. Neither manufacturers, importers, bottlers, brokers, wholesalers or their representatives may give such items to patrons on the premises of retail licensees; however, manufacturers, wholesalers, or their authorized representatives conducting tastings pursuant to the provisions of § 4.1-201.1 of the Code of Virginia may give no more than one such item to each consumer provided a sample of alcoholic beverages during the tasting event; and such items bearing moderation and responsible drinking messages may be displayed by the licensee and his employees on the licensed premises and given to patrons on such premises as long as any references to any alcoholic beverage manufacturer or its brands are subordinate in type size and quantity of text to such moderation message;

3. Items in excess of $10 in wholesale value may be donated by distilleries, wineries and breweries only to participants or entrants in connection with the sponsorship of conservation and environmental programs, professional, semi-professional or amateur athletic and sporting events subject to the limitations of 3VAC5-20-100, and for events of a charitable or cultural nature;

4. Items may be sold by mail upon request or over-the-counter at retail establishments customarily engaged in the sale of novelties and specialties, provided they are sold at

the reasonable open market price in the localities where sold;

5. Wearing apparel shall be in adult sizes; and

6. Point-of-sale order blanks, relating to novelty and specialty items, may be provided by beer and wine wholesalers to retail licensees for use on their premises, if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or his representative. ~~Wholesale licensees in the Commonwealth may not put order blanks on the package.~~ Wholesalers may not be involved in the redemption process.

3VAC5-20-70. ~~Advertising; fairs and trade shows; alcoholic beverage displays.~~ (Repealed.)

~~Alcoholic beverage advertising at fairs and trade shows shall be limited to booths assigned to manufacturers, bottlers and wholesalers and to the following:~~

~~1. Display of alcoholic beverages in closed containers with informational signs provided such merchandise is not sold or given away except as permitted in 3VAC5-70-100;~~

~~2. Distribution of informational brochures, pamphlets, and the like, relating to alcoholic beverages; and~~

~~3. Distribution of novelty and specialty items bearing alcoholic beverage advertising not in excess of $5.00 in wholesale value.~~

3VAC5-20-80. ~~Advertising; film presentations.~~ (Repealed.)

~~Advertising of alcoholic beverages by means of film presentations is restricted to the following:~~

~~1. Presentations made only to bona fide private groups, associations or organizations upon request; and~~

~~2. Presentations essentially educational in nature.~~

3VAC5-20-90. Advertising; coupons.

A. "Normal retail price" shall mean the average retail price of the brand and size of the product in a given market, and not a reduced or discounted price.

B. Coupons may be advertised in accordance with the following conditions and restrictions:

1. Manufacturers of spirits, wine and beer may use only refund, not discount, coupons. The coupons may not exceed 50% of the normal retail price and may not be honored at a retail outlet but shall be mailed directly to the manufacturer or its designated agent. Such agent may not be a wholesaler or retailer of alcoholic beverages. Coupons are permitted in the print media, the Internet, by direct mail to consumers or as part of, or attached to, the package. Beer ~~refund coupons may be part of, or attached to, the package only if the brewery put them on at the point of manufacture; however, beer~~ and wine wholesalers may provide coupon pads to retailers for use by retailers on their premises, if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or his representative. ~~Wholesale beer licensees in the Commonwealth may not put them on the package.~~ Wholesale ~~wine~~ licensees may attach refund coupons to the package ~~and wholesale wine licensees may provide coupon pads to retailers for use by retailers on their premises,~~ if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, for each retailer or his representative.

2. Manufacturers offering refund coupons on spirits and wine sold in state government stores shall notify the board at least 45 days in advance of the issuance of the coupons of its amount, its expiration date and the area of the Commonwealth in which it will be primarily used, if not used statewide.

3. Wholesale licensees are not permitted to offer coupons.

4. Retail licensees may offer coupons, including their own discount or refund coupons, on wine and beer sold for off-premises consumption only. Retail licensees may offer their own coupons in the print media, at the point-of-sale or by direct mail to consumers.

5. No retailer may be paid a fee by manufacturers or wholesalers of alcoholic beverages for display or use of coupons and the name of the retail establishment may not appear on any refund coupons offered by manufacturers. No manufacturer or wholesaler may furnish any coupons or materials regarding coupons to retailers which are customized or designed for discount or refund by the retailer.

6. Retail licensees or employees thereof may not receive refunds on coupons obtained from the packages before sale at retail.

7. No coupons may be honored for any individual below the legal age for purchase.

3VAC5-20-100. Advertising; sponsorship of public events; restrictions and conditions.

A. Generally. Alcoholic beverage advertising in connection with the sponsorship of public events shall be limited to sponsorship of conservation and environmental programs, professional, semi-professional, or amateur athletic and sporting events and events of a charitable or cultural nature by ~~distilleries, wineries, and breweries~~ manufacturers and wholesalers.

B. Restrictions and conditions.

1. Any sponsorship on a college, high school or younger age level is prohibited;

2. Cooperative advertising, as defined in ~~3VAC5-20-10~~ 3VAC5-30-80, is prohibited;

3. Awards or contributions of alcoholic beverages are prohibited;

4. Advertising of alcoholic beverages shall conform in size and content to the other advertising concerning the event and advertising regarding charitable events shall place primary emphasis on the charitable fund raising nature of the event;

5. A charitable event is one held for the specific purpose of raising funds for a charitable organization which is exempt from federal and state taxes;

6. Advertising in connection with the sponsorship of an event may be only in the media, including programs, tickets and schedules for the event, on the inside of licensed or unlicensed retail establishments and at the site of the event;

7. Advertising materials as defined in 3VAC5-30-60 G, table tents as defined in 3VAC5-30-60 H and canisters are permitted; and

8. Prior written notice shall be submitted to the board describing the nature of the sponsorship and giving the date, time and place of it~~; and~~.

~~9. Manufacturers may sponsor public events and wholesalers may only cosponsor charitable events.~~

3VAC5-30-10. Rotation and exchange of stocks of retailers by wholesalers; permitted and prohibited acts.

A. Permitted acts. For the purpose of maintaining the freshness of the stock and the integrity of the products sold by him, a wine wholesaler may perform, except on Sundays, and a beer wholesaler may perform, except on Sundays in jurisdictions where local ordinances restrict Sunday sales of alcoholic beverages, the following services for a retailer upon consent, which may be a continuing consent, of the retailer:

1. Rotate, repack and rearrange wine or beer in a display (shelves, coolers, cold boxes, and the like, and floor displays in a sales area);

2. Restock wine and beer;

3. Rotate, repack, rearrange and add to his own stocks of wine or beer in a storeroom space assigned to him by the retailer;

4. Transfer wine and beer between storerooms, between displays, and between storerooms and displays; and

5. Create or build original displays using wine or beer products only.

B. Prohibited acts. A wholesaler may not:

1. Alter or disturb in any way the merchandise sold by another wholesaler, whether in a display, sales area or storeroom except in the following cases:

a. When the products of one wholesaler have been erroneously placed in the area previously assigned by the retailer to another wholesaler; or

b. When a floor display area previously assigned by a retailer to one wholesaler has been reassigned by the retailer to another wholesaler;

2. Mark or affix retail prices to products other than those sold by the wholesaler to the retailer; or

3. Sell or offer to sell alcoholic beverages to a retailer with the privilege of return, except for ordinary and usual commercial reasons as set forth below:

a. Products defective at the time of delivery may be replaced;

b. Products erroneously delivered may be replaced or money refunded;

c. Products that a manufacturer discontinues nationally may be returned and money refunded;

d. Resalable draft beer may be returned and money refunded;

e. Products in the possession of a retail licensee whose license is terminated by operation of law, voluntary surrender or order of the board may be returned and money refunded upon permit issued by the board;

f. Products which have been condemned and are not permitted to be sold in this Commonwealth may be replaced or money refunded upon permit issued by the board; or

g. Wine or beer may be exchanged on an identical quantity and brand basis for quality control purposes. Any such exchange shall be documented by the word "exchange" on the proper invoice.

3VAC5-30-20. Restrictions upon employment; exceptions.

No retail licensee shall employ in any capacity in his licensed business any person engaged or employed in the manufacturing, bottling or wholesaling of alcoholic beverages; nor shall any licensed manufacturer, bottler or wholesaler employ in any capacity in his licensed business any person engaged or employed in the retailing of alcoholic beverages.

This section shall not apply to banquet licensees, farm winery licensees, or to off-premises winery licensees.

3VAC5-30-30. Certain transactions to be for cash; "cash" defined; checks and money orders; electronic fund transfers; records and reports by sellers; payments to the board.

A. Sales of wine or beer between wholesale and retail licensees of the board shall be for cash paid and collected at the time of or prior to delivery, except where payment is to be made by electronic fund transfer as hereinafter provided. Each invoice covering such a sale or any other sale shall be signed by the purchaser at the time of delivery and shall specify the manner of payment.

B. "Cash," as used in this section, shall include (i) legal tender of the United States, (ii) a money order issued by a duly licensed firm authorized to engage in such business in the Commonwealth, (iii) a valid check drawn upon a bank account in the name of the licensee or permittee or in the trade name of the licensee or permittee making the purchase, ~~or~~ (iv) an electronic fund transfer, initiated by a wholesaler pursuant to subsection D of this section, from a bank account in the name, or trade name, of the retail licensee making a purchase from a wholesaler or the board, or (v) a credit or debit card issued in the name of the licensee or permittee or in the trade name of the licensee or permittee.

C. If a check, money order or electronic fund transfer is used, the following provisions apply:

1. If only alcoholic beverage merchandise is being sold, the amount of the checks, money orders or electronic fund transfers shall be no larger than the purchase price of the alcoholic beverages; and

2. If nonalcoholic merchandise is also sold to the retailer, the check, money order or electronic fund transfer may be in an amount no larger than the total purchase price of the alcoholic beverages and nonalcoholic beverage merchandise. If a separate invoice is used for the nonalcoholic merchandise, a copy of it shall be attached to the copies of the alcoholic beverage invoices which are retained in the records of the wholesaler and the retailer. If a single invoice is used for both the alcoholic beverages and nonalcoholic beverage merchandise, the alcoholic beverage items shall be separately identified and totaled.

D. If an electronic fund transfer is used for payment by a licensed retailer or a permittee for any purchase from a wholesaler or the board, the following provisions shall apply:

1. Prior to an electronic fund transfer, the retail licensee shall enter into a written agreement with the wholesaler specifying the terms and conditions for an electronic fund transfer in payment for the delivery of wine or beer to that retail licensee. The electronic fund transfer shall be initiated by the wholesaler no later than one business day after delivery and the wholesaler's account shall be credited by the retailer's bank no later than the following business day. The electronic fund transfer agreement shall incorporate the requirements of this subdivision, but this subdivision shall not preclude an agreement with more restrictive provisions. For purposes of this subdivision, the term "business day" shall mean a business day of the respective bank;

2. The wholesaler must generate an invoice covering the sale of wine or beer, and shall specify that payment is to be made by electronic fund transfer. Each invoice must be signed by the purchaser at the time of delivery; and

3. Nothing in this subsection shall be construed to require that any licensee must accept payment by electronic fund transfer.

E. Wholesalers shall maintain on their licensed premises records of all invalid checks received from retail licensees for the payment of wine or beer, as well as any stop payment order, insufficient fund report or any other incomplete electronic fund transfer reported by the retailer's bank in response to a wholesaler initiated electronic fund transfer from the retailer's bank account. Further, wholesalers shall report to the board any invalid checks or incomplete electronic fund transfer reports received in payment of wine or beer when either (i) any such invalid check or incomplete electronic fund transfer is not satisfied by the retailer within seven days after notice of the invalid check or a report of the incomplete electronic fund transfer is received by the wholesaler, or (ii) the wholesaler has received, whether satisfied or not, either more than one such invalid check from any single retail licensee or received more than one incomplete electronic fund transfer report from the bank of any single retail licensee, or any combination of the two, within a period of 180 days. Such reports shall be upon a form provided by the board and in accordance with the instructions set forth in such form.

F. Payments to the board for the following items shall be for cash, as defined in subsection B:

1. State license taxes and application fees;

2. Purchases of alcoholic beverages from the board by mixed beverage licensees;

3. Wine taxes and excise taxes on beer and wine coolers;

4. Solicitors' permit fees and temporary permit fees;

5. Registration and certification fees, and the markup or profit on cider, collected pursuant to these regulations;

6. Civil penalties or charges and costs imposed on licensees and permittees by the board; and

7. Forms provided to licensees and permittees at cost by the board.

3VAC5-30-60. Inducements to retailers; beer and wine tapping equipment; bottle or can openers; spirits back-bar pedestals; banquet licensees; paper, cardboard or plastic advertising materials; clip-ons and table tents; sanctions and penalties.

A. Any manufacturer, bottler or wholesaler may sell, rent, lend, buy for or give to any retailer, without regard to the value thereof, the following:

1. Draft beer knobs, containing advertising matter which shall include the brand name and may further include only trademarks, housemarks and slogans and shall not include any illuminating devices or be otherwise adorned with mechanical devices which are not essential in the dispensing of draft beer; and

2. Tapping equipment, defined as all the parts of the mechanical system required for dispensing draft beer in a normal manner from the carbon dioxide tank through the beer faucet, excluding the following:

a. The carbonic acid gas in containers, except that such gas may be sold only at the reasonable open market price in the locality where sold;

b. Gas pressure gauges (may be sold at cost);

c. Draft arms or standards;

d. Draft boxes; and

e. Refrigeration equipment or components thereof.

Further, a manufacturer, bottler or wholesaler may sell, rent or lend to any retailer, for use only by a purchaser of draft beer in kegs or barrels from such retailer, whatever tapping equipment may be necessary for the purchaser to extract such draft beer from its container.

B. Any manufacturer, bottler or wholesaler may sell to any retailer and install in the retailer's establishment tapping accessories such as standards, faucets, rods, vents, taps, tap standards, hoses, cold plates, washers, couplings, gas gauges, vent tongues, shanks, and check valves, if the tapping accessories are sold at a price not less than the cost of the industry member who initially purchased them, and if the price is collected within 30 days of the date of sale.

Wine tapping equipment shall not include the following:

1. Draft wine knobs, which may be given to a retailer;

2. Carbonic acid gas, nitrogen gas, or compressed air in containers, except that such gases may be sold in accordance with the reasonable open market prices in the locality where sold and if the price is collected within 30 days of the date of the sales; or

3. Mechanical refrigeration equipment.

C. Any beer tapping equipment may be converted for wine tapping by the beer wholesaler who originally placed the equipment on the premises of the retail licensee, provided that such beer wholesaler is also a wine wholesaler licensee. Moreover, at the time such equipment is converted for wine tapping, it shall be sold, or have previously been sold, to the retail licensee at a price not less than the initial purchase price paid by such wholesaler.

D. Any manufacturer, bottler or wholesaler of wine or beer may sell or give to any retailer, bottle or can openers upon which advertising matter regarding alcoholic beverages may appear, provided the wholesale value of any such openers given to a retailer by any individual manufacturer, bottler or wholesaler does not exceed ~~$10~~ $20. Openers in excess of ~~$10~~ $20 in wholesale value may be sold, provided the reasonable open market price is charged therefor.

E. Any manufacturer of spirits may sell, lend, buy for or give to any retail licensee, without regard to the value thereof, back-bar pedestals to be used on the retail premises and upon which advertising matter regarding spirits may appear.

F. Manufacturers or wholesalers of wine or beer may sell at the reasonable wholesale price to banquet licensees wine glasses or paper or plastic cups upon which advertising matter regarding wine or beer may appear.

G. Manufacturers, bottlers or wholesalers of alcoholic beverages may not provide point-of-sale advertising for any alcoholic beverage or any nonalcoholic beer or nonalcoholic wine to retail licensees except in accordance with ~~3VAC5-20-20~~ 3VAC5-30-80. Manufacturers, bottlers and wholesalers may provide advertising materials to any retail licensee that have been customized for that retail licensee provided that such advertising materials must:

1. Comply with all other applicable regulations of the board;

2. Be for interior use only;

3. Contain references to the alcoholic beverage products or brands offered for sale by the manufacturer, bottler, or wholesaler providing such materials and to no other products; and

4. Be made available to all retail licensees.

H. Any manufacturer, bottler or wholesaler of wine, beer or spirits may sell, lend, buy for or give to any retail licensee clip-ons and table tents.

I. Any manufacturer, bottler or wholesaler of alcoholic beverages may clean and service, either free or for compensation, coils and other like equipment used in dispensing wine and beer, and may sell solutions or compounds for cleaning wine and beer glasses, provided the reasonable open market price is charged.

J. Any manufacturer, bottler or wholesaler of alcoholic beverages licensed in this Commonwealth may sell ice to

retail licensees provided the reasonable open market price is charged.

K. Any licensee of the board, including any manufacturer, bottler, importer, broker as defined in § 4.1-216 A of the Code of Virginia, wholesaler or retailer who violates, attempts to violate, solicits any person to violate or consents to any violation of this section shall be subject to the sanctions and penalties as provided in § 4.1-328 of the Code of Virginia.

3VAC5-30-80. Advertising materials that may be provided to retailers by manufacturers, importers, bottlers, or wholesalers.

A. There shall be no cooperative advertising as between a producer, manufacturer, bottler, importer, or wholesaler and a retailer of alcoholic beverages, except as may be authorized by regulation pursuant to § 4.1-216 of the Code of Virginia. The term "cooperative advertising" shall mean the payment or credit, directly or indirectly, by any manufacturer, bottler, importer, or wholesaler whether licensed in this Commonwealth or not to a retailer for all or any portion of advertising done by the retailer.

B. Manufacturers, bottlers, and wholesalers of alcoholic beverages may sell, lend, buy for, or give to retailers any nonilluminated advertising materials made of paper, cardboard, canvas, rubber, foam, or plastic, provided the advertising materials have a wholesale value of $40 or less per item. Advertising material referring to any brand or manufacturer of spirits may only be provided to mixed beverage licensees and may not be provided by beer and wine wholesalers, or their employees, unless they hold a spirits solicitor's permit.

C. Manufacturers, bottlers, or wholesalers may supply to retailers napkins, placemats, and coasters that contain (i) a reference to the name of a brand of nonalcoholic beer or nonalcoholic wine, or (ii) a message relating solely to and promoting moderation and responsible drinking, which message may contain the name, logo, and address of the sponsoring manufacturer, bottler, or wholesaler, provided such recognition is subordinate to the message.

D. Any manufacturer, including any vendor authorized by any such manufacturer, whether or not licensed in the Commonwealth, may sell service items bearing alcoholic brand references to on-premises retail licensees. Such retail licensee may display the service items on the premises of his licensed establishment. Each such retail licensee purchasing such service items shall retain a copy of the evidence of his payment to the manufacturer or authorized vendor for a period of not less than two years from the date of each sale of the service items. As used in this subdivision, "service items" means articles of tangible personal property normally used by the employees of on-premises licensees to serve alcoholic beverages to customers including, but not limited to, glasses, napkins, buckets, and coasters.

E. Beer and wine "neckers," recipe booklets, brochures relating to the wine manufacturing process, vineyard geography, and history of a wine manufacturing area; and point-of-sale entry blanks relating to contests and sweepstakes may be provided by beer and wine wholesalers to retail licensees for use on retail premises, if such items are offered to all retail licensees equally, and the wholesaler has obtained the consent, which may be a continuing consent, of each retailer or his representative. Wholesale licensees in the Commonwealth may not put entry blanks on the package. Solicitors holding permits under the provisions of 3VAC5-60-80 may provide point-of-sale entry blanks relating to contests and sweepstakes to mixed beverage licensees for use on the premises if such items are offered to all mixed beverage licensees equally, and the solicitor has obtained the consent, which may be a continuous consent, of each mixed beverage licensee or his representative.

F. Manufacturers, bottlers, or wholesalers may supply refund coupons, if they are supplied, displayed, and used in accordance with 3VAC5-20-90.

G. No manufacturer, bottler, wholesaler, or importer of alcoholic beverages, whether licensed in this Commonwealth or not, may directly or indirectly sell, rent, lend, buy for, or give to any retailer any advertising materials, decorations, or furnishings under any circumstances otherwise prohibited by law, nor may any retailer induce, attempt to induce, or consent to any such supplier of alcoholic beverages furnishing such retailer any such advertising.

H. Any advertising materials provided for herein, which may have been obtained by any retail licensee from any manufacturer, bottler, or wholesaler of alcoholic beverages, may be installed in the interior of the licensed establishment by any such manufacturer, bottler, or wholesaler using any normal and customary installation materials. With the consent of the retail licensee, which consent may be a continuing consent, wholesalers may mark or affix retail prices on these materials.

I. Every retail licensee who obtains any point-of-sale advertising shall keep a complete, accurate, and separate record of all such material obtained. Such records shall show (i) the name and address of the person from whom obtained; (ii) the date furnished; (iii) the item furnished; and (iv) the price charged therefore. All such records, invoices and accounts shall be kept by each such licensee at the place designated in the license for a period of two years and shall be available for inspection and copying by any member of the board or its special agents during reasonable hours.

VA.R. Doc. No. R08-878; Filed June 12, 2009, 3:46 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Fast-Track Regulation

Title of Regulation: **6VAC20-20. Rules Relating to Compulsory Minimum Training Standards for Law-Enforcement Officers (amending 6VAC20-20-25).**

Statutory Authority: § 9.1-902 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 August 5, 2009.

Effective Date: January 1, 2010.

Agency Contact: Judith Kirkendall, Regulatory Coordinator, Department of Criminal Justice Services, 1100 Bank Street, 12th Floor, Richmond, VA 23219, telephone (804) 786-8003, FAX (804) 225-3853, or email judith.kirkendall@dcjs.virginia.gov.

Basis: Section 9.1-102 of the Code of Virginia authorizes the Criminal Justice Services Board to set compulsory minimum training standards for law-enforcement officers.

Purpose: The purpose of the amendment is to enable standing review committees to function more smoothly to achieve the goals and objectives for which they were created. Currently, the ability to change the performance outcome as needed is difficult. It is essential to public safety that law-enforcement training is consistent and standardized for the entire Commonwealth and the need to annually review all parts of the training standards and revise and update as necessary is a critical component to this training.

Rationale for Fast-Track Process: Affected and interested parties have been notified and no one has voiced any objection.

Substance: The amended regulation transfers approval authority from the Criminal Justice Services Board to the Committee on Training and is proposed due to the desire to have the Committee on Training responsible for changes to all parts of the training standards rather than continuing to have one item of the standard allocated to the board. Over 10 years of experience in working in the current manner strongly recommends that all parties would be better served by having the Committee on Training handle all suggested changes to the training standards using the process set up in the rules. The language added related to this process clarifies that interested parties or members of the community may make suggestions for change to the training standards and have these reviewed by the Curriculum Review Committee.

Issues: The advantages to the public and to the Commonwealth include a simpler, less costly, and less time-consuming method for changing the performance outcome statement that is part of the training standards. This enables annual updates to be completed more efficiently and provides greater clarity to instructors and recruits involved in entry-level law-enforcement training. There are no disadvantages.

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

Summary of the Proposed Amendments to Regulation. The Criminal Justice Services Board (Board) proposes to amend its minimum training standards for law enforcement officers to move the responsibility of setting performance outcomes from the Board to the standing Committee on Training. The Board also proposes to add language that specifies how the Committee on Training will handle public suggestions for regulatory change.

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

Estimated Economic Impact. Currently, the Board has approval authority for training categories, setting hours of required training and for deciding performance outcomes. The Committee on Training currently has approval over "training objectives, criteria and lesson plan guides." The Board proposes to move authority to set performance outcomes to the Committee on Training so that they will be responsible for setting and amending all parts of the training standards. This change will likely streamline the process of considering training standards so that new rules take less time to consider. Regulated entities and other interested individuals will likely benefit from the clarity that this change brings to the process of setting training standards.

Although § 2.2-4007 of the Code of Virginia provides for members of the general public to propose new regulations or changes to existing regulations, these Rules have not had an explicit provision for how such comments and suggestions should be handled. The Board proposes to set guidelines to specify how the Committee on Training will review such suggestions. Under these proposed regulations, the Committee will review any suggestions they receive in writing at their next regularly scheduled meeting. If suggestions are made at a public hearing, the Committee will be able to make a decision as to whether to act on them at that time. The public will likely benefit from this change as it clarifies their right to be part of the process of writing/amending regulations.

Businesses and Entities Affected. The Department of Criminal Justice Services reports that these regulations most directly affect law enforcement agencies and entities that provide training to law enforcement officers. There are approximately 400 law enforcement agencies and training entities in the Commonwealth.

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

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

Effects on the Use and Value of Private Property. This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

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

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Criminal Justice Services concurs with the economic impact analysis as reviewed by the Department of Planning and Budget.

Summary:

The proposed amendments transfer the responsibility of setting performance outcomes from the Criminal Justice Services Board to the standing Committee on Training.

6VAC20-20-25. Approval authority.

A. The Criminal Justice Services Board shall be the approval authority for the training categories~~,~~ and hours ~~and performance outcomes~~ of the compulsory minimum training standards. Amendments to training categories~~,~~ and hours ~~and performance outcomes~~ shall be made in accordance with the provisions of the Administrative Process Act ~~(§ 9-6.14:1 et seq.~~ (§ 2.2-4000 et seq. of the Code of Virginia).

B. The Committee on Training of the Criminal Justice Services Board shall be the approval authority for the performance outcomes, training objectives, criteria, and lesson plan guides ~~which~~ that support the performance outcomes. ~~Training~~ Performance outcomes, training objectives, criteria, and lesson plan guides supporting the compulsory minimum training standards ~~and performance outcomes~~ may be added, deleted, or amended by the Committee on Training based upon written recommendation of a chief of police, sheriff, agency administrator, academy director ~~or the~~, Curriculum Review Committee, an interested party, or member of the community. Any suggestions received related to performance outcomes, training objectives, criteria, and lesson plan guides shall be reviewed at the regularly scheduled meeting of the Curriculum Review Committee. If comment is received at any public hearing, the Committee on Training may make a decision at that time. Changes to the hours and training categories will only be made in accordance with the provisions of the Administrative Process Act.

C. Prior to approving changes to the performance outcomes, training objectives, criteria or lesson plan guides, the Committee on Training shall conduct a public hearing. Sixty days prior to the public hearing, the proposed changes shall be distributed to all affected parties for the opportunity to comment. Notice of change of the performance outcomes, training objectives, criteria, and lesson plan guides shall be filed for publication in the Virginia Register of Regulations upon adoption, change, or deletion. The department shall notify each certified academy in writing of any new, revised, or deleted objectives. Such adoptions, changes, or deletions shall become effective 30 days after notice of publication in the Virginia Register.

VA.R. Doc. No. R09-1884; Filed June 10, 2009, 10:06 a.m.

Fast-Track Regulation

Title of Regulation: **6VAC20-50. Rules Relating to Compulsory Minimum Training Standards for Jailors or Custodial Officers, Courthouse and Courtroom Security Officers and Process Service Officers (amending 6VAC20-50-21).**

Statutory Authority: § 9.1-102 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 August 5, 2009.

Effective Date: January 1, 2010.

Agency Contact: Judith Kirkendall, Regulatory Coordinator, Department of Criminal Justice Services, 1100 Bank Street, 12th Floor, Richmond, VA 23219, telephone (804) 786-8003, FAX (804) 225-3853, or email judith.kirkendall@dcjs.virginia.gov.

Basis: Section 9.1-102 of the Code of Virginia authorizes the Criminal Justice Services Board to set compulsory minimum training standards for jailors, court security officers, and civil process service officers.

Purpose: The purpose of the amendment is to enable standing review committees to function more smoothly to achieve the goals and objectives for which they were created. Currently, the ability to change the performance outcome as needed is difficult. It is essential to public safety that jail/court security/civil process service training is consistent and standardized for the entire Commonwealth and the need to annually review all parts of the training standards and revise and update as necessary is a critical component to this training.

Rationale for Fast-Track Process: Affected and interested parties have been notified and no one has voiced any objection.

Substance: The amended regulation transfers approval authority from the Criminal Justice Services Board to the Committee on Training and is proposed due to the desire to have the Committee on Training responsible for changes to all parts of the training standards rather than continuing to have one item of the standard allocated to the board. Over 10 years of experience in working in the current manner has shown that all parties would be better served by having the Committee on Training handle all suggested changes to the training standards using the process set up in the rules.

Issues: The advantages to the public and to the Commonwealth include a simpler, less costly, and less time-consuming method for changing the performance outcome statement that is part of the training standards. This enables annual updates to be completed more efficiently and provides greater clarity to instructors and recruits involved in entry-level jail/court security/civil process service training. There are no disadvantages.

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

Summary of the Proposed Amendments to Regulation. The Criminal Justice Services Board (Board) proposes to amend its Minimum Training Standards for Jailors, Courthouse and Courtroom Security Officers and Civil Process Service Officers. Specifically, the Board proposes to move the responsibility of setting performance outcomes from the Board to the standing Committee on Training.

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

Estimated Economic Impact. Currently, the Board has approval authority for training categories, setting hours of required training and for deciding performance outcomes. The Committee on Training currently has approval over "training objectives, criteria and lesson plan guides." The Board proposes to move authority to set performance outcomes to the Committee on Training so that they will be responsible for setting and amending all parts of the training standards. This change will likely streamline the process of considering training standards so that new rules take less time to consider. Regulated entities and other interested individuals will likely benefit from the clarity that this change brings to the process of setting training standards.

Businesses and Entities Affected. The Department of Criminal Justice Services reports that these regulations most directly affect jailors and security and process service officers as well as entities that provide training to them. There are approximately 9,700 jailors and security and process service officers who will currently be affected.

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

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

Effects on the Use and Value of Private Property. This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

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

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Criminal Justice Services concurs with the economic impact analysis as reviewed by the Department of Planning and Budget.

Summary:

The proposed amendments transfer the responsibility of setting performance outcomes from the Criminal Justice Services Board to the standing Committee on Training.

6VAC20-50-21. Approval authority.

A. The Criminal Justice Services Board shall be the approval authority for the training categories ~~and performance outcomes~~ of the compulsory minimum training standards. Amendments to the training categories ~~and performance outcomes~~ shall be made in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

B. The Committee on Training of the Criminal Justice Services Board shall be the approval authority for the performance outcomes, training objectives, criteria, and lesson plan guides that support the performance outcomes. ~~Training~~ Performance outcomes, training objectives, criteria, and lesson plan guides supporting the compulsory minimum training standards ~~and performance outcomes~~ may be added, deleted, or amended by the Committee on Training based upon written recommendation of a chief of police, sheriff, agency administrator, academy director, Curriculum Review Committee, interested party, or member of the community. Any suggestions received related to performance outcomes, training objectives, criteria, and lesson plan guides shall be reviewed at the regularly scheduled meeting of the Curriculum Review Committee. If comment is received at any public hearing, the Committee on Training may make a decision at that time. Changes to the training categories ~~and performance outcomes~~ will only be made in accordance with the provisions of the Administrative Process Act.

C. Prior to approving changes to the performance outcomes, training objectives, criteria, or lesson plan guides, the Committee on Training shall conduct a public hearing. Sixty days prior to the public hearing, the proposed changes shall be distributed to all affected parties for the opportunity to comment. Notice of change of the performance outcomes, training objectives, criteria, and lesson plan guides shall be filed for publication in the Virginia Register of Regulations upon adoption, change, or deletion. The department shall notify each certified academy in writing of any new, revised, or deleted objectives. Such adoptions, changes, or deletions shall become effective 30 days after notice of publication in the Virginia Register. ~~Changes to the training categories and performance outcomes will only be made in accordance with the provisions of the Administrative Process Act.~~

VA.R. Doc. No. R09-1886; Filed June 10, 2009, 10:06 a.m.

STATE BOARD OF JUVENILE JUSTICE

Proposed Regulation

Title of Regulation: **6VAC35-150. Standards for Nonresidential Services Available to Juvenile and Domestic Relations District Courts (amending 6VAC35-150-10, 6VAC35-150-30, 6VAC35-150-40, 6VAC35-150-50, 6VAC35-150-60, 6VAC35-150-80, 6VAC35-150-90, 6VAC35-150-100, 6VAC35-150-110, 6VAC35-150-130, 6VAC35-150-140, 6VAC35-150-200 through 6VAC35-150-320, 6VAC35-150-335, 6VAC35-150-340, 6VAC35-150-350, 6VAC35-150-380 through 6VAC35-150-425, 6VAC35-150-430, 6VAC35-150-435, 6VAC35-150-450 through 6VAC35-150-510, 6VAC35-150-530, 6VAC35-150-540, 6VAC35-150-550, 6VAC35-150-620, 6VAC35-150-640, 6VAC35-150-670, 6VAC35-150-680, 6VAC35-150-690; adding 6VAC35-150-62, 6VAC35-150-64, 6VAC35-150-66, 6VAC35-150-336, 6VAC35-150-355, 6VAC35-150-365, 6VAC35-150-415, 6VAC35-150-615; repealing 6VAC35-150-20, 6VAC35-150-35, 6VAC35-150-55, 6VAC35-150-70, 6VAC35-150-150, 6VAC35-150-160, 6VAC35-150-165, 6VAC35-150-175, 6VAC35-150-180, 6VAC35-150-190, 6VAC35-150-330, 6VAC35-150-370, 6VAC35-150-427, 6VAC35-150-440, 6VAC35-150-560, 6VAC35-150-570, 6VAC35-150-590, 6VAC35-150-600, 6VAC35-150-610, 6VAC35-150-650, 6VAC35-150-660, 6VAC35-150-700, 6VAC35-150-710, 6VAC35-150-720, 6VAC35-150-730, 6VAC35-150-740).**

Statutory Authority: §§ 16.1-233, 16.1-309.9, and 66-10 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until September 4, 2009.

Agency Contact: Janet Van Cuyk, Regulatory Coordinator, Department of Juvenile Justice, 700 E. Franklin Street, 4th Floor, Richmond, VA 23219, telephone (804) 371-4097, FAX (804) 371-0773, or email janet.vancuyk@djj.virginia.gov.

Basis: The Board of Juvenile Justice (the board) is entrusted with general authority to promulgate regulations by § 66-10 of the Code of Virginia. Additionally, the board is mandated by §§ 16.1-233 and 16.1-309.9 of the Code of Virginia to issue regulations pertaining to court service units and other nonresidential services. Section 16.1-233 of the Code of Virginia requires the board to regulate court service unit staff, including their appointment and function, with the goal of establishing, as much as practicable, uniform services for juvenile and domestic relations courts throughout the Commonwealth. Moreover, § 16.1-309.9 of the Code of Virginia requires the board to regulate the "development, implementation, operation and evaluation of the range of community-based programs, services and facilities authorized" by the Virginia Juvenile Community Crime Control Act (VJCCCA).

Purpose: The Standards for Nonresidential Services Available to Juvenile and Domestic Relations District Courts, 6VAC35-150, establish minimum requirements for the operation of state and locally operated court service units and for nonresidential programs available to the juvenile and domestic relations district courts, including those funded through the VJCCCA. The provisions for court service units include guidance for processing delinquency petitions at intake, making decisions whether to detain alleged delinquent juveniles, and supervising probationers and parolees. Additionally, the regulation establishes standards for the development, implementation, operation, and evaluation of the nonresidential community-based programs and services, such as those established by the VJCCCA (§ 16.1-309.2 et seq. of the Code of Virginia), which provide treatment and supervision for juveniles, who are before the court or an intake officer, and are designed to divert juveniles from becoming further involved with the juvenile justice system.

The last comprehensive review of the regulation was completed in 2002. Since that time, the board has promulgated several other regulations as required by law. Sections of these regulations guide the operations of court service units, which are the primary subject of this regulation. Where applicable, those regulations are clearly referenced, and the proposed amendments in this regulation will streamline the applicability of each provision. Moreover, during the periodic review period, the regulation was reviewed in light of current statutes, regulations, and practices. As a result of this review, it was determined that a comprehensive review of and substantive changes to the regulation were necessary. The proposed amendments incorporate changes recommended by a committee of individuals representing state and locally operated court service units. The proposed changes enhance the clarity of the regulation with the goal of developing provisions that are reasonable, prudent, and will not impose an unnecessary burden on its regulants or the public.

Substance: The proposed regulation contains the following changes:

6VAC35-150-10 (Definitions): the definitions and terms have been updated for clarity and consistency with other regulations promulgated by the board;

6VAC35-150-10 and 6VAC35-150-40 (Variances): the term "variance" is defined and the section of the board's certification regulations related thereto is cross-referenced;

6VAC35-150-10, 6VAC35-150-130 (Research), and 6VAC35-150-500 (Juvenile participation in research): the term "human research" is defined and the provisions related thereto cross-reference the governing statute and regulations, which were enacted after the last review of this regulation;

6VAC35-150-55 (Probation officers' caseload): repealed given the broad nature of the existing verbiage ("other factors" could include anything) and the reality that court service units must comply with any court order for supervision;

6VAC35-150-66 (Procedures for handling funds – formerly 6VAC35-150-190): amended to govern only those funds over which the board has regulatory authority;

6VAC35-150-70 (Court service unit director and staff): repealed as position descriptions, employee work profiles, and performance plans are required by the state's Department of Human Resources Management. Additionally, the duties of the directors are, in part, governed by statute;

6VAC35-150-80 (Background checks): amended for conformity with the background checks required for children's residential programs;

6VAC35-150-90 (Training): amended to require training as required by an employee's job duties and training needs. The specific hours of training requirement were removed;

6VAC35-150-140 (Records management): subsection E was stricken as it addresses the contents of files for postdispositional residential care, which is not governed by this regulation. Please note that 6VAC35-150-310 was amended to require certain information in the case record for juveniles subject to such placements;

6VAC35-150-165 (Custody investigations): repealed as very few court service units are required to complete custody investigations and, of those who continue to be ordered to complete such investigations, the form and content are governed by local court requirements, procedures, and practices;

6VAC35-150-200 (Security and safety procedures): amended to require training on crisis intervention and prevention techniques for the office and the field;

6VAC35-150-210 (Physical force): amended to clearly detail the circumstances under which force may be utilized;

6VAC35-150-220 (Searches): amended to clarify that such searches may include a search of the immediate area surrounding the individual;

6VAC35-150-260 (Transportation of detained juveniles): subsection B was stricken as it is governed by the transportation guidelines;

6VAC35-150-270 (Intake duties) and 6VAC35-150-290 (Intake communication with detention): the references to the juvenile tracking system have been removed and replaced with references to the applicable electronic data collection system;

6VAC35-150-310 (Postdispositional detention): amended to clarify that it applied only to postdispositional placement greater than 30 days. It also dictates what information must be contained in the case record when a juvenile is subject to such placement;

6VAC35-150-320 (Notice of juvenile's transfer): amended to clarify that the court service unit did not have to separately notify a juvenile's parents of his transfer when the juvenile's parents already had knowledge of the transfer;

6VAC35-150-335 (Diversion): the limit on the duration of diversion was extended from 90 to 120 days (except in cases of truancy). After the 120 days, the intake officer is prohibited from filing a petition on the acts of offenses precipitating the initial referral;

6VAC35-150-336 (Social histories): incorporates, consolidates, and removes specific procedural requirements previously contained in 6VAC35-150-150 (Reports for the court) and 6VAC35-150-160 (Social history). Many of the requirements for such reports to the court, which are statutorily provided, were deleted;

6VAC35-150-350 (Supervision plans for juveniles): parts addressing issues when a juvenile is in direct care were moved to 6VAC35-150-415 (Supervision of juvenile in direct care). Other procedural aspects were stricken;

6VAC35-150-355 (Supervision of juveniles on electronic monitoring): added to require procedures to govern electronic monitoring programs (such procedures were required by former Part III, Article 4);

6VAC35-150-365 (Supervision of adult on probation): added to address specific supervision issues;

6VAC35-150-370 (Placements in the community): repealed as such contacts would be required by the supervision plan;

6VAC35-150-390 (Transfer of case supervision): amended to clarify when and how case supervision may be transferred;

6VAC35-150-410 (Commitment information): requires the commitment information to precede (rather than precede *or* accompany) the juvenile's arrival at RDC;

6VAC35-150-415 (Supervision of juvenile in direct care): added to address specific supervision issues;

6VAC35-150-430 (Program requirements): adds to the programmatic prerequisites for programs. It also cross-references the background check requirement for court service units (and, thus, 6VAC35-150-440 [Employee and volunteer background check] has been deleted). It further incorporates the provisions of former 6VAC35-150-590 (Referrals) and 6VAC35-150-570 (Response to crisis);

6VAC35-150-435 (Contracted services): amended to clarify that contracted services are subject to the same standards as programs subject to the regulation;

6VAC35-150-600 (Surveillance officers) and 6VAC35-150-610 (Substance abuse and testing services): repealed as they are incorporated into the definition of programs or contract services (and thus are already governed by the regulation);

6VAC35-150-615 (Applicability of Part III, Article 2): added to clarify to which programs Article 2 is applicable;

6VAC35-150-620 (Supervision of juveniles): subsection B was stricken as some nonresidential programs may provide peer mentoring, etc.; and liability requirements would govern the remaining parts;

6VAC35-150-640 (Emergency and fire safety): broadened to govern different types of emergencies;

6VAC35-150-680 (Physical and mechanical restraints and chemical agents): expanded to prohibit use of chemical agents; and

Article 4 (Electronic monitoring): this article has been stricken given the procedural aspects of the existing provisions and the applicability of Part III to any such programs. The requirement for procedures is now contained in 6VAC35-150-355.

Many of the sections have been moved and/or grouped differently for clustering of related provisions:

6VAC35-150-62 (Suitable quarters: moved from 6VAC35-150-175 under Budget and Finance to the part dealing with Administration;

6VAC35-150-64 (Prohibited financial transactions): moved from 6VAC35-150-180 under Budget and Finance to the part dealing with Administration;

6VAC35-150-66 (Procedures for handling funds): moved from 6VAC35-150-190 under Budget and Finance to the part dealing with Administration;

6VAC35-150-336 (Social histories): moved from 6VAC35-150-150 and 6VAC35-150-160 under Administration to Probation, Parole, and Other Supervision.

6VAC35-150-510 C (Case management requirements): incorporates former 6VAC35-150-560; and

6VAC35-150-670 (Juveniles' medical needs): incorporates former 6VAC35-150-650 and 6VAC35-150-660.

Also, unnecessary verbiage has been deleted (i.e.; 6VAC35-150-20 and 6VAC35-150-30 are recommended for repeal) and other technical and stylistic changes were made.

Issues: This regulation is essential to protect the public safety by providing for the supervision of delinquent juveniles. The regulation includes standards for both state and locally operated court service units, to ensure that "uniform services, insofar as is practical, will be available to juvenile and domestic relations district courts throughout the Commonwealth." (§ 16.1-233 C of the Code of Virginia.) The regulation provides guidance for processing alleged delinquent juveniles at intake, detaining delinquents, and supervising probationers and parolees in the community.

The regulation further protects the public safety by establishing standards for the development, implementation, operation, and evaluation of the nonresidential community-based programs and services such as those established by the VJCCCA. Such VJCCCA programs provide supervision and services to juveniles who are before the court or before a juvenile intake officer, with the goal of preventing those juveniles from further penetrating the juvenile justice system.

Having clear, concise, and consistent requirements across localities promotes the health, safety, and welfare of citizens by ensuring consistency in services throughout the Commonwealth. The proposed amendments would streamline the reporting requirements while not affecting (i) the quality of services provided by court service units and program or services providers or (ii) the ability of the department to oversee such functioning.

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

Summary of the Proposed Amendments to Regulation. As part of a periodic review, the Board of Juvenile Justice (Board) proposes to amend its Standards for Nonresidential Services Available to Juvenile and Domestic Relations Courts. Specifically, the Board proposes to:

- Shorten the regulation title to Standards for Non-Residential Services,
- Update the definition section and add certain terms for clarity and consistency,
- Rearrange some regulatory sections to improve clarity,
- Clarify requirements for volunteers and interns,
- Consolidate requirements for reporting to courts and remove obsolete statutory requirements,
- Clarify when certain procedures should be required for handling non-department funds,
- Update various cross references,
- Amend background check requirements and
- Modify continuing education (CE) requirements by removing language that requires all employees to complete 40 hours of CE annually.

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

Estimated Economic Impact. Most of the Board's proposed regulatory changes are being made to consolidate and clarify what is required of Department of Juvenile Justice (DJJ) employees and volunteers who are subject to the Standards for Non-Residential Services. The Board proposes, for instance, to add definitions for terms that are used in the regulatory text but which may have meaning that would not be immediately clear. Regulated entities are very unlikely to incur any costs on account of these non-substantive proposed changes; regulated entities may, however benefit from having their rights and responsibilities under these regulations spelled out more clearly.

The Board is also proposing several substantive changes to the background check requirements and CE requirements in these regulations.

Currently, all new employees and other personnel (volunteers, providers of contractual services, etc.) are required to undergo 1) criminal history checks through the Virginia Criminal Information Network (VCIN) and the National Criminal Information Center (NCIC), 2) a Department of Motor Vehicles (DMV) check and 3) a fingerprint check through the Virginia State Police and the Federal Bureau of Investigation (FBI) Employees and volunteers who will have direct contact with juveniles must also undergo a child protective services registry check.

The Board proposes to amend these requirements so that volunteers and providers of contractual services will only have to undergo background/fingerprint checks if they will be alone with juveniles while performing their volunteer work/contract services. The Board also proposes to allow new employees to start work pending the results of their background checks so long as they are supervised when they

are working with juveniles until DJJ receives the results of the background checks.

The Board still proposes to require background checks for these individuals before they are alone with juveniles so juveniles under the care of DJJ will likely be as well protected under the proposed regulations as they are under current regulations. Eliminating the requirement that all volunteers and contractors undergo background checks, however, will likely reduce the costs incurred by regulated entities or DJJ for these checks. DJJ will also likely benefit from being able to allow new employees to start work pending the outcome of background checks as this will allow DJJ to fill open positions more quickly.

Current regulations require all full-time employees who provide direct services to juveniles and their families to complete 40 hours of juvenile justice related CE each year. The Board proposes to amend this requirement by removing the reference to a specific number of hours required. The Board will instead allow DJJ to decide on an employee by employee basis how much CE is needed each year. This proposed change will allow DJJ to minimize costs associated with training (costs for labor to replace the training employees, course fees, etc) while still ensuring that employees get the training DJJ feels is necessary for them to perform their duties well.

Businesses and Entities Affected. These proposed regulations will affect all DJJ employees, volunteers and contractors who work with juveniles in a non-residential setting.

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

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

Effects on the Use and Value of Private Property. This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

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

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Juvenile Justice concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding 6VAC35-150.

Summary:

This regulation was last reviewed in 2002, and, since then, a number of administrative changes have occurred. This regulation was reviewed in light of current practices and in consultation with representatives of state and locally operated court service units. The proposed changes will update regulatory provisions in light of best practices and with the goal of providing a user-friendly regulatory scheme for which the requirements for compliance are clearly delineated.

The proposed changes (i) update the definitions section and terms used for clarity and consistency with other regulations promulgated by the board; (ii) remove unnecessary verbiage; (iii) amend the background check section in light of recent statutory changes; (iv) clarify requirements for volunteers and interns; (v) streamline requirements for all reports to the court; (vi) clarify when procedures should be required for handling nondepartment funds; (vii) incorporate appropriate cross references to statutes, regulations, and guidance documents amended, enacted, or promulgated since the last review; (viii) formalize the process for obtaining a waiver of regulatory provisions; and (ix) amend the duties of court service unit staff in light of legislative changes since 2002.

CHAPTER 150
STANDARDS FOR NONRESIDENTIAL SERVICES ~~AVAILABLE TO JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS~~

Part I
General Provisions

6VAC35-150-10. Definitions.

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

"Adult" means a person 18 years of age or older who is not a delinquent child as defined in § 16.1-228 of the Code of Virginia.

"Agency" means any governmental entity of the Commonwealth or any unit of local government including counties, cities, towns, and regional governments and the departments thereof, and including any entity, whether public or private, with which any of the foregoing has entered into a contractual relationship for the provision of services as described in this chapter.

"Alternative day services" or "structured day treatment" means nonresidential programs that provide services, which may include counseling, supervision, recreation, prevocational services, and education, to juveniles at a central facility.

"Approved procedures" means (i) standard procedures issued by the Department of Juvenile Justice, which apply to all state-operated court service units and which may be voluntarily observed by locally operated court service units; or (ii) ~~variants~~ modifications to the standard procedures approved by the deputy director of community programs or his designee ~~for individual state-operated court service units~~; or (iii) procedures for locally operated court service units approved in accordance with local ~~policies and reviewed by the director or his designee~~ procedures.

"Behavior management" means ~~the planned and systematic use of various techniques selected according to group and individual differences of juveniles and designed to teach awareness of situationally appropriate behavior, strengthen desirable behavior, and reduce or eliminate undesirable behavior~~ those principles and methods employed to help a juvenile achieve positive behavior and to address and correct a juvenile's inappropriate behavior in a constructive and safe manner, in accordance with written procedures governing program expectations, treatment goals, juvenile and staff safety and security, and the juvenile's individual service plan.

"Board" means the Board of Juvenile Justice.

"Case record" or "record" means written or electronic information regarding ~~one person,~~ an individual and the ~~person's~~ individual's family, if applicable, that is maintained in accordance with approved procedures.

~~"Counseling" means the planned use of interpersonal relationships to promote behavioral change or social adjustment.~~

~~"Counselor" means an individual who provides counseling.~~

"Court service unit," "CSU," or "unit" means a state or locally operated court service unit established pursuant to §§ 16.1-233 and 16.1-235 of the Code of Virginia.

"Department" means the Department of Juvenile Justice.

"Direct care" means the time during which a resident, who is committed to the department pursuant to §§ 16.1-272, 16.1-285.1, or subdivision A 14 or A 17 of § 16.1-278.8 of the Code of Virginia, is under the supervision of staff in a juvenile correctional center or other juvenile residential facility operated by or under contract with the department.

"Diversion" means the provision of counseling, informal supervision, programs ~~and~~, or services, or a combination thereof, which is consistent with the protection of the public safety~~, to youth who can be cared for or treated through alternatives to the juvenile justice system~~ and the welfare of the juvenile as provided for in ~~§ 16.1-227~~ §§ 16.1-227 and 16.1-260 of the Code of Virginia.

"Electronic monitoring" means the use of electronic devices, including, but not limited to, voice recognition and global positioning systems, to verify a ~~person's~~ juvenile's or adult's compliance with certain judicial orders or conditions of release from incarceration, ~~or~~ as an alternative to detention, or as a short-term sanction for noncompliance with rules of probation or parole.

"Human research" means any ~~medical or psychological~~ investigation ~~designed to develop or contribute to general knowledge by using human subjects who may be exposed to possible physical or psychological injury as a consequence of participation as subjects and which departs from the application of established and accepted methods appropriate to meet the subjects' needs~~ as defined by § 32.1-162.16 of the Code of Virginia and 6VAC35-170.

"Individual service plan" means a written plan ~~of action~~ developed, updated as needed, and modified at intervals~~,~~ to meet the needs of ~~each~~ a juvenile or an adult. It specifies measurable short-term and long-term goals, the ~~methods~~ objectives, strategies, and ~~times~~ time frames for reaching the goals, and the individuals responsible for carrying out the plan.

"Individual supervision plan" means a written plan developed, updated as needed, and modified at intervals to meet the needs of a juvenile or adult. It specifies measurable short-term and long-term goals, the objectives, strategies, and time frames for reaching the goals, and the individuals

responsible for carrying out the plan. Individual supervision plans are applicable during probation and parole and for treatment of a juvenile or an adult and the services for the juvenile's family for the time during which a juvenile is committed to the department.

"Intake" means the process for screening complaints and requests alleged to be within the jurisdiction of the juvenile and domestic relations district court pursuant to § 16.1-260 of the Code of Virginia.

"Intake officer" means the probation officer who is authorized to perform the intake function as provided in § 16.1-260 of the Code of Virginia.

~~"Intensive supervision" means frequent contacts, strict monitoring of behavior, and counseling provided to predispositional or postdispositional youth who are at high risk of committing new offenses.~~

"Juvenile~~,~~" ~~"youth" or "child"~~ means ~~a person less than 18 years of age~~ an individual less than 18 years of age, a delinquent child, a child in need of supervision, or a child in need of services as defined in § 16.1-228 of the Code of Virginia. For the purpose of this regulation, "juvenile" includes an individual, regardless of age, who is or has been before the court, who was under the age of 18 at the time of the offense or act, who is under supervision or receiving services from a court service unit or a program under contract with or monitored by the unit, or who is committed to the department.

~~"Local plan" means a document or set of documents prepared by one or more localities pursuant to § 16.1-309.3 D of the Code of Virginia, describing a range of community-based sanctions and services addressing individual juvenile offenders' needs and local juvenile crime trends.~~

"Mechanical restraint" means ~~equipment used to physically restrain or control a person's behavior, such as handcuffs, shackles or straightjackets~~ the use of a mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or portion of a person's body as a means to control physical activity when the individual being restricted does not have the ability to remove the device.

"Nonresidential services" means community-based services that are not part of a residential program, including those provided by a residential program to nonresidents.

"Outreach detention" means intensive supervision, which includes frequent contacts, strict monitoring of behavior, and case management, if applicable, of ~~youth who might otherwise be~~ a juvenile as an alternative to placement in secure detention or shelter care.

"Parole" means supervision of ~~an individual~~ a juvenile released from commitment to the department as provided for by ~~§ 16.1-293~~ §§ 16.1-285, 16.1-285.1, and 16.1-285.2 of the Code of Virginia.

"Physical restraint" means the application of approved techniques by trained program staff ~~to control the actions of juveniles by means of physical contact~~ that involves a physical intervention or a "hands-on" hold to prevent the individual from moving his body when that individual's behavior places him or others at imminent risk.

"Probation" means a court-ordered ~~disposition placing an individual~~ placement of a juvenile or an adult under the supervision of a probation officer.

"Program" or "service" means the planned application of staff and resources to achieve the stated mission for working with juveniles and, if applicable, their families identified in Article 12.1 (§ 16.1-309.2 et seq.) of Chapter 11 of Title 16.1 of the Code of Virginia.

"Provider" means ~~an agency, organization or association that runs a program or service~~ a person, corporation, partnership, association, organization, or public agency that is legally responsible for compliance with regulatory and statutory requirements relating to the provision of services or the functioning of a program.

~~"Shall" means an obligation to act is imposed.~~

~~"Substance abuse assessment and testing" means a qualified professional's assessment and evaluation of the nature of, and the factors that contribute to, individual or family problems associated with substance abuse, and recommendations for treatment and related services.~~

"Supervision" means visiting or making other contact with~~,~~ or providing treatment, rehabilitation, or services to a juvenile as required by the court ~~or~~, by an intake officer, or for parole purposes.

~~"Supervision plan" means a written plan of action, updated as needed, to provide supervision and treatment for a specific individual. It specifies needs, goals, methods, time frames, and who is responsible for each step. A single supervision plan may include, as appropriate, specific plans for supervision during probation and parole, and for treatment of a youth and services for the youth's family during commitment.~~

~~"Surveillance officer" means a person, other than a probation or parole officer, who makes contact with a juvenile under supervision to verify the juvenile's presence at work, school, home, etc. A surveillance officer may be an employee of a court service unit or other service provider, or a properly trained and supervised volunteer.~~

"Tamper" means any ~~accidental or~~ purposeful alteration to electronic monitoring equipment that interferes with or weakens the monitoring system.

"Time-out" means a systematic behavior management technique designed to reduce or eliminate inappropriate

behavior by temporarily removing a juvenile from contact with people or other reinforcing stimuli.

~~"Unit" or "CSU" means court service unit.~~

"Variance" means a board action that relieves a program from having to meet or develop a plan of action for the requirements of a section or subsection of this chapter.

"Volunteer" or "intern" means any individual or group who of their own free will and without any financial gain provides goods or services ~~to the program~~ without compensation.

6VAC35-150-20. ~~Previously adopted regulations superseded.~~ (Repealed.)

~~These Standards for Nonresidential Services Available to Juvenile and Domestic Relations District Courts supersede:~~

~~1. 6VAC35-80-10 et seq., Holdover Standards, issued by the Board of Youth and Family Services, September 9, 1992;~~

~~2. 6VAC35-110-10 et seq., Minimum Standards for Court Services in Juvenile and Domestic Relations District Courts, issued by the Board of Corrections January 12, 1983, and adopted by the Board of Youth and Family Services July 12, 1990; and~~

~~3. 6VAC35-130-10 et seq., Standards for Outreach Detention, adopted by the State Board of Corrections on June 9, 1981, revised on March 3, 1983, and adopted by the State Board of Youth and Family Services in 1990.~~

6VAC35-150-30. Applicability.

A. Parts I (6VAC35-150-10 et seq.) and II (6VAC35-150-55 et seq.) of this chapter apply to all ~~court service units~~ CSUs for juvenile and domestic relations district courts.

B. Parts I (6VAC35-150-10 et seq.) and III (6VAC35-150-425 et seq.) of this chapter apply to nonresidential programs ~~and services~~ (i) for which the CSU contracts or (ii) ~~to which the CSU refers juveniles who are before the court or before an intake officer, including programs and services~~ are included in a local "Virginia Juvenile Community Crime Control Act" plan. ~~6VAC35-150-600, 6VAC35-150-610 and Articles 3 (6VAC35-150-620 et seq.) and 4 (6VAC35-150-700 et seq.) of~~

C. Part III of this chapter also ~~apply~~ applies to ~~those~~ applicable programs and services ~~that are~~ operated by ~~the court service unit~~ or contracted with a CSU.

6VAC35-150-35. ~~Establishment of policy.~~ (Repealed.)

~~The standards embodied in this regulation pursuant to § 16.1-233 C of the Code of Virginia also establish, individually and collectively, "programmatic and fiscal policies" that the board is directed to develop pursuant to § 66-10 of the Code of Virginia. Nothing in this regulation shall be construed to limit the board's authority to establish additional or separate programmatic and fiscal policies for court service units or other nonresidential programs in accordance with § 66-10 of the Code of Virginia.~~

6VAC35-150-40. ~~Outcome-based and performance-based standards authorized~~ Variances.

~~The board may, in its discretion on a case-by-case basis and for a specified time, exempt individual units or programs from specific standards set out in this chapter and authorize the unit or program to implement on an experimental basis one or more substitute standards that measure performance or outcomes.~~ A variance may be requested by a program administrator or service provider when conditions exist where the program or service provider is not able to comply with a section or subsection of this chapter. Any such request must meet the criteria and comply with the procedural requirements provided in 6VAC35-20-92.

6VAC35-150-50. Licensure by other agencies.

A current license or certificate issued by the Commonwealth shall be accepted as evidence of a program's compliance with one or more specific standards of this chapter when the requirements for licensure or certification are substantially the same as, or exceed, the requirements set out in ~~the standards~~ this chapter.

~~Part II~~
~~Operating Standards for Court Service Units~~

~~Article 1~~
~~Administration~~

6VAC35-150-55. ~~Probation officers' caseload.~~ (Repealed.)

~~The caseload for probation officers in the unit shall be determined in accordance with approved procedures, taking into account the relative weight of cases based on the frequency and intensity of contacts indicated by an assessment of the juvenile's risk of reoffending, case complexity, and other factors.~~

Part II
Operating Standards for Court Service Units

Article 1
Administration

6VAC35-150-60. Organizational structure.

There shall be a written description and organizational chart of the unit showing current lines of authority, responsibility, and accountability, including the unit director's reporting responsibility.

6VAC35-150-62. Suitable quarters.

A. The CSU director annually shall review the unit's needs for suitable quarters, utitilies, and furnishings and shall request from the appropriate governing body the resources to meet these needs.

B. Intake, probation, and parole officers shall have access to private office space.

6VAC35-150-64. Prohibited financial transactions.

The unit shall not collect or disburse support payments, fines, restitution, court fees, or court costs.

6VAC35-150-66. Procedures for handling funds.

The unit director shall establish written procedures for handling any ongoing unit employee fund established and maintained by the employees that is derived from employee contributions, the operation of vending machines, special fundraising projects, or other employee canteen services, that utilizes the name of the unit or the department, or that the unit approves the obtaining of or obtains a tax identification number for such funds. Any such funds are not state funds and shall not be commingled in any way with state funds. The department's tax identification number shall not be used for such funds.

6VAC35-150-70. ~~Court service unit director and staff.~~ (Repealed.)

~~A. For every employee and volunteer in the unit there shall be a current position description indicating the minimum qualifications required and the incumbent's duties and responsibilities.~~

~~B. Unless otherwise provided by local or state policy, a performance plan and a performance evaluation shall be completed annually for each employee in accordance with approved procedures.~~

~~C. The Court Service Unit Director shall provide financial, managerial and programmatic reports as required by department and local policy.~~

6VAC35-150-80. Background checks.

~~All new unit employees and auxiliary personnel, including volunteers, shall undergo a preemployment check of references; criminal history checks with the automated Virginia Criminal Information Network (VCIN), the National Criminal Information Center (NCIC), and the Department of Motor Vehicles (DMV); and fingerprint checks by the State Police and the FBI; those who have direct contact with youth shall also undergo a child protective services registry check.~~

A. Except as provided in subsection C of this section, all persons who (i) accept a position of employment, (ii) volunteer on a regular basis and will be alone with a juvenile in the performance of their duties, or (iii) provide contractual services directly to a juvenile on a regular basis and will be alone with a juvenile in the performance of their duties in a CSU, or as required by 6VAC35-150-430 C, shall undergo the following background checks to ascertain whether there are criminal acts or other circumstances that would be detrimental to the safety of juveniles:

1. A reference check;

2. A fingerprint check with (i) the Virginia State Police (VSP) and (ii) the Federal Bureau of Investigation (FBI);

3. A central registry check with Child Protective Services (CPS); and

4. A driving record check, if applicable to the individual's job duties.

B. To minimize vacancy time when the FBI fingerprint check has been requested, unit staff may be hired pending the results of the FBI fingerprint checks, provided:

1. All of the other applicable components of subsection A of this section have been completed;

2. The applicant is given written notice that continued employment is contingent on the FBI fingerprint check results; and

3. Staff hired under this exception shall not be allowed to be alone with juveniles and may work with juveniles only when under the direct supervision of staff whose background checks have been completed until such time as all background checks are completed.

C. The unit, program, or service provider shall have procedures for supervising nonstaff persons who have contact with residents.

D. Subsection A of this section shall apply to programs to which the CSU refers juveniles who are before the court or before an intake officer, including, but not limited to, programs included in a local Virginia Juvenile Community Crime Control Act plan. When an agency or program refers juveniles to other service providers, excluding community service programs and licensed professionals or programs licensed or regulated by other state agencies, the referring agency shall require the service provider to document that all persons who provide services or supervision through substantial one-on-one contact with juveniles have undergone a background check as required in subsection A of this section.

6VAC35-150-90. Training.

A. All employees~~,~~ and volunteers ~~and interns~~ shall receive documented orientation ~~and annual training~~ appropriate to their duties and to address any needs identified by the individual and the supervisor.

B. All ~~full-time~~ employees ~~who provide direct services to juveniles and their families~~ shall receive ~~40 hours of juvenile justice related training annually~~ on-going training and development appropriate to their duties and to address any needs identified by the individual and the supervisor, if applicable.

~~C. All clerical staff shall receive at least 20 hours of training annually to upgrade skills.~~

6VAC35-150-100. Personnel ~~policies~~ and operating procedures.

All staff shall have access to ~~policies and~~ approved procedures governing:

1. Recruitment and selection;

2. Grievance and appeal;

3. Confidential individual employee personnel records;

4. Discipline;

5. Equal employment opportunity;

6. Leave and benefits;

7. Resignations and terminations;

8. Orientation;

9. Promotion;

10. Probationary period; and

11. Competitive salary.

6VAC35-150-110. Volunteers.

A. For every volunteer, the unit shall maintain a current description of duties and responsibilities and a list of the minimum required qualifications;

B. Volunteers shall comply with all applicable regulations, policies, and approved procedures;

~~B.~~ C. One or more designated persons shall coordinate volunteer services; and

~~C.~~ D. Volunteers shall be registered with the department for liability insurance purposes.

6VAC35-150-130. Research.

A. ~~Youth~~ Juveniles shall not be used as subjects of human research, except ~~when approved procedures permit human research~~ as provided in 6VAC35-170 and in accord with Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia.

B. The testing of medicines or drugs for experimentation or research is prohibited.

6VAC35-150-140. Records management.

A. Case records shall be indexed and kept up to date and ~~uniform~~ uniformly in content and arrangement in accordance with approved procedures.

B. ~~Juvenile case~~ Case records shall be kept in a secure location accessible only to authorized staff.

C. All case records shall be maintained and disposed of in accordance with The Library of Virginia regulations and record retention schedules~~,~~ and with approved procedures.

D. Any disclosure or release of information shall be in accordance with the Code of Virginia and applicable federal statutes and regulations ~~(i.e., 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records)~~ and approved procedures.

~~E. The case records of youth placed in any postdispositional residential care shall contain:~~

~~1. Social history;~~

~~2. Order or agreement concerning the placement;~~

~~3. Dates of acceptance and placement;~~

~~4. Reason for placement;~~

~~5. Financial and tuition arrangements, if appropriate; and~~

~~6. Supervision and visitation agreements.~~

6VAC35-150-150. ~~Reports for the court.~~ (Repealed.)

~~All reports prepared for the court shall be prepared and reviewed in accordance with approved procedures and, except for transfer reports and addenda to previously submitted reports, shall contain the following identifying information:~~

~~1. Full name of subject;~~

~~2. Social Security Number;~~

~~3. Address;~~

~~4. Race;~~

~~5. Date of birth (must be verified);~~

~~6. Sex;~~

~~7. Parents or guardians (for juveniles only);~~

~~8. Author; and~~

~~9. Date of report.~~

6VAC35-150-160. ~~Social history.~~ (Repealed.)

~~A. A social history shall be prepared for each juvenile placed on probation supervision with the court service unit or committed to the department within timelines established by approved procedures.~~

~~B. A current social history shall be prepared upon written request from other units when accompanied by a court order. An existing social history that is not more than 12 months old may be used provided an addendum is prepared updating all changed information.~~

~~C. Social history reports shall be in written form and include at least the following information:~~

~~1. Identifying information as listed in 6VAC35-150-150.~~

~~2. Court history -- specific description of past, present and pending petitions and dispositions.~~

3. Police or prosecutor's version of the instant offense, when available, for all juveniles who are committed to the department.

4. Victim impact information, when ordered by the court.

5. An accurate and up-to-date offense history.

6. Previous contacts with the unit, including diversion and informal resolution at intake, and known contacts with other agencies or treatment services in the community.

7. Subject: physical description; behavioral description; medical, educational, psychological information (as applicable); educational and other known handicaps or disabilities (if applicable); peer relationships, including gang affiliation; response to authority; employment status; and whether the subject has a driver's license.

8. Family: parents/custodians/guardians — ages, marital status, court record, employment status, economic status, level of education, health, interpersonal relationships. Siblings — ages, court record, level of education.

9. Home and neighborhood: Physical description of home and neighborhood, family's and officer's view of neighborhood impact on subject, and length of residence.

10. Assessment of the subject's strengths and weaknesses and, if applicable, the subject's family.

11. Recommendations may be included if permitted by the court.

D. Adults' social history reports, if ordered by the court, may be in a modified format as provided for in procedures approved by the court service unit director after consultation with the judge or judges of the court.

6VAC35-150-165. Custody investigations. (Repealed.)

If the unit performs custody investigations upon order of the court, such investigations shall be completed in conformance with "Guidelines for Custody Investigations" (1995) jointly promulgated by the State Board of Juvenile Justice and the State Board of Social Services.

Article 2
Budget and Finance

6VAC35-150-175. Suitable quarters. (Repealed.)

A. The CSU director annually shall review the unit's needs for suitable quarters, utilities and furnishings and request from the appropriate governing body the resources to meet these needs.

B. Intake, probation and parole officers shall have access to private office space so equipped that conversations may not be overheard from outside the office.

6VAC35-150-180. Prohibited financial transactions. (Repealed.)

The unit shall not collect or disburse support payments, fines, or restitution.

6VAC35-150-190. Procedures for handling funds. (Repealed.)

The court service unit director shall establish written policies, procedures and practice for handling funds within the unit. All court service units shall adhere to all Commonwealth of Virginia purchasing and fiscal requirements when expending state funds.

Article 3 2
Security and Safety

6VAC35-150-200. Security and emergency safety procedures.

In accordance with approved procedures, the unit shall implement:

1. Safety and security precautions for the office environment, to include at least fire, bomb threat, hostage and medical emergency situations; and

2. Safety and security precautions for staff making field visits to juveniles and their families.

1. Safety and security precautions for the office environment to include at least fire, bomb threat, natural disasters, and hostage and medical emergency situations;

2. Safety and security precautions for staff making field visits to juveniles and their families; and

3. Training on appropriate crisis prevention and intervention techniques for the office and the field that staff may use to manage behavior that poses a risk to the safety of themselves or others.

6VAC35-150-210. Physical force.

A. Physical force shall be used only to protect self or others as a last resort and shall never be used as punishment or with the intent to inflict injury. Staff shall use only the minimum force deemed reasonable and necessary to eliminate the imminent risk to the safety of themselves or others.

B. Each use of physical force shall be reported in writing to the CSU director, who shall ensure that all reportable incidents are further reported in accordance with the department's policies procedures for reporting serious incidents.

6VAC35-150-220. Searches of youth.

Searches of individuals an individual's person and immediate area may be conducted only in accordance with approved procedures and only by, with all applicable state and federal statutes and regulations, and with the Virginia and

United States constitutions. Only staff who have received training approved by the department shall conduct searches.

6VAC35-150-230. Weapons.

A. A probation officer may obtain authorization to carry a weapon as provided by § 16.1-237 of the Code of Virginia only in accordance with approved procedures that require at least: (i) firearms safety training, (ii) a psychological or mental health assessment, ~~and~~ (iii) approval by the ~~court service unit~~ CSU director, and (iv) approval by the unit director's supervisor.

B. All ~~court service unit~~ CSU staff authorized to carry weapons shall have received training ~~approved by the department regarding~~ and retraining, in accordance with approved procedures, which shall include the limited circumstances when weapons may be carried and used as required by law and liability insurance coverage.

6VAC35-150-240. Arrest of ~~youth~~ juvenile by staff.

Probation officers shall exercise their arrest powers ~~only~~ in accordance with approved procedures.

6VAC35-150-250. Absconders.

Unit staff shall cooperate with department personnel and state and local law-enforcement authorities to help locate and recover juveniles who ~~fail to report for~~ violate the conditions of their probation or parole supervision and upon whom a detention order has been issued or who escape or run away from a juvenile correctional center, detention home, or other juvenile placement.

6VAC35-150-260. Transportation of detained juveniles.

A. Detained juveniles shall be transported in accord with "Guidelines for Transporting Juveniles in Detention" ~~(June 13, 1991)~~ (September 2004) issued by the board in accord with § 16.1-254 of the Code of Virginia.

~~B. When the CSU is responsible for the transportation of youth to special placements, staff shall make transportation arrangements appropriate to the security risk posed by the juvenile.~~

~~C.~~ B. Routine transportation of juveniles in postdispositional detention shall be the responsibility of the parents or guardians or the program providing service to the juvenile.

Article ~~4~~ 3
Intake

6VAC35-150-270. Intake duties.

A. When making an intake determination as provided for by ~~the~~ § 16.1-260 of the Code of Virginia, whether in person or by telephone or interactive video conferencing, the intake officer shall, in accordance with approved procedures:

1. Explain the steps and options in the intake process to each person present~~, including their constitutional and statutory rights~~ as provided for in approved procedures;

2. Make all required data entries into the department's ~~Juvenile Tracking System~~ electronic data collection system in accordance with § 16.1-224 of the Code of Virginia and approved procedures;

3. Consult with available parents, guardians, legal custodian, or other person standing in loco parentis to determine the appropriate placement, unless a court has ordered detention; and

4. Notify the juvenile's parents, guardians, legal custodian, or other person standing in loco parentis in cases involving the juvenile's detention.

B. When making a detention decision pursuant to § 16.1-248.1 of the Code of Virginia and when making recommendations to the court at a detention hearing pursuant to § 16.1-250 of the Code of Virginia, ~~court service unit~~ CSU personnel shall make use of the uniform risk assessment instrument and related procedure mandated by Chapter 648 of the 2002 Acts of Assembly.

C. When the chief judge in a jurisdiction requests the provision of a replacement intake officer pursuant to § 16.1-235.1 of the Code of Virginia, the CSU shall enter into a written agreement with the requesting court that shall address, at a minimum, the scope of the intake duties, the location where intake cases will be processed, and the protocol for arranging any required face-to-face contact between the intake officer and juvenile.

6VAC35-150-280. Medical and psychiatric emergencies at intake.

If during the intake interview, the intake officer suspects that the ~~youth~~ juvenile requires emergency medical or psychiatric care, the intake officer shall:

1. Immediately contact the ~~youth's~~ juvenile's parents or legal guardians to advise them of the emergency and any responsibilities they may have; and

2. Before placing a ~~youth~~ juvenile in a more restrictive setting, the intake officer shall arrange for the ~~youth~~ juvenile to receive the needed emergency care.

6VAC35-150-290. Intake communication with detention.

When CSU staff facilitate the placement of a juvenile in detention ~~process~~, they shall~~: 1. Query the Juvenile Tracking System to ascertain all pertinent information on the juvenile who is being detained, and complete the Juvenile Alert Screen on the Juvenile Tracking System; and 2. Give~~ give detention staff, by telephone ~~or~~, in writing, or by ~~entry into the Juvenile Tracking System~~ electronic means, no later than the time the juvenile arrives at the detention facility, the reason for detention and the ~~instant~~ offenses~~, and~~ for which

the juvenile is being detained including any ancillary offenses. CSU staff shall also give detention staff the following information when available and applicable: medical information; parents' or guardians' names, addresses and phone numbers; prior record as regards sexual offenses, violence against persons~~,~~ or arson; suicide attempts or self-injurious behaviors~~; and~~ gang membership and affiliation; and any other information as required by approved procedure.

Article ~~5~~ 4
Out-of-Home Placements

6VAC35-150-300. Predispostionally placed ~~youth~~ juvenile.

A. In accordance with approved procedures, a representative of the ~~court service unit~~ CSU shall make contact, either face-to-face or via videoconferencing, with each ~~youth~~ juvenile placed in predispositional detention, jail, or shelter care pursuant to § 16.1-248.1 of the Code of Virginia, within five days of the placement and shall make contact with the ~~youth~~ juvenile at least once every 10 days thereafter~~,~~. Such contact shall be either face-to-face or by telephone or videoconferencing and shall include direct communication between the CSU staff and the juvenile.

B. The case of each predispositionally placed ~~youth~~ juvenile shall be reviewed at least every 10 days in accordance with approved procedures to determine whether there has been a material change sufficient to warrant recommending a change in placement.

C. When the unit ~~has placed or~~ is the placing agency and is supervising a ~~youth~~ juvenile in a residential facility, designated staff of the ~~court service unit~~ CSU shall be available to the facility's staff 24 hours a day in case of emergency.

6VAC35-150-310. Postdispositional detention.

A. When a court orders a juvenile to be detained postdispositionally for more than 30 days pursuant to subsection B of § 16.1-284.1 of the Code of Virginia, the ~~court service unit~~ CSU shall develop a written plan with the facility to enable such ~~youth~~ juvenile to take part in one or more community treatment programs appropriate for ~~their~~ that juvenile's rehabilitation, which may be provided at the facility or while the juvenile is on temporary release status, as determined by ~~their~~ that juvenile's risk to public safety and other relevant factors. The ~~court service unit~~ CSU shall provide a copy of the juvenile's social history to the postdispositional detention program upon request.

B. The case record of a juvenile placed in a postdispositional detention program pursuant to subsection B of § 16.1-284.4 of the Code of Virginia shall contain:

1. Social history;

2. Court order;

3. Reason for placement; and

4. Current supervision plan, if applicable.

6VAC35-150-320. Notice of ~~youth's~~ juvenile's transfer.

When ~~court service unit~~ CSU staff have knowledge that a ~~youth~~ juvenile has been moved from one residential facility ~~or program~~ to another residential facility and do not have knowledge that the juvenile's parents or legal guardians have been advised of the transfer, ~~they~~ CSU staff shall notify the ~~youth's~~ juvenile's parents or legal guardians within 24 hours and shall document the notification in the ~~youth's~~ juvenile's case record.

6VAC35-150-330. ~~Removal of youth from home. (Repealed.)~~

~~When considering whether to remove a youth from his home for any reason other than to detain the youth, the youth's parents or guardians, if available, shall be included in making that decision.~~

Article ~~6~~ 5
Probation, Parole, and Other Supervision

6VAC35-150-335. ~~Informal supervision~~ Diversion.

A. When ~~unit personnel are supervising a juvenile in the absence of a court order,~~ an intake officer proceeds with diversion in accordance with subsection B of § 16.1-260 of the Code of Virginia, such supervision shall not exceed ~~90~~ 120 days. ~~Court service unit personnel shall not supervise any person absent a court order except as provided for in approved procedures.~~ For a juvenile alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258 of the Code of Virginia, such supervision shall be limited to 90 days.

B. When a new complaint is filed against a juvenile who is currently under supervision in accordance with subsection A of this section, and the juvenile qualifies for diversion in accordance with subsection B of § 16.1-260 of the Code of Virginia, then the intake officer may proceed with diversion for an additional 120 days from the date of the subsequent complaint.

C. When a case is diverted by referring a juvenile for services to another public or private agency, informal supervision shall not continue beyond the delivery of such services unless approved by the director or designee.

D. In no case shall a petition be filed by the CSU based on acts or offenses in the original complaint after 120 days from the date of the initial referral on the original complaint.

6VAC35-150-336. Social histories.

A. A social history shall be prepared in accordance with approved procedures (i) when ordered by the court, (ii) for each juvenile placed on probation supervision with the unit, (iii) for each juvenile committed to the department, or (iv) upon written request from another unit when accompanied by

a court order. Social history reports shall include the following information:

1. Identifying and demographic information on the juvenile;

2. Current offense and prior court involvement;

3. Social, medical, psychological, and educational information about the juvenile;

4. Information about the family; and

5. Dispositional recommendations, if permitted by the court.

B. An existing social history that is less than 12 months old may be used provided an addendum is prepared updating all changed information. A new social history shall be prepared as required in subsection A of this section or when ordered by the court if the existing social history is more than 12 months old.

C. Social history reports on adults may be modified as provided for in procedures approved by the CSU director after consultation with the judge or judges of the court.

6VAC35-150-340. Beginning supervision.

Within the timeframes established by approved procedures for beginning supervision, a probation or parole officer shall:

1. See the ~~subject~~ juvenile face-to-face;

2. Give the ~~subject~~ juvenile the written rules of supervision, including any special conditions, and explain these to the ~~subject~~ juvenile and, when appropriate, to the ~~subject's~~ juvenile's parents or guardians; and

3. Document these actions in the case record.

6VAC35-150-350. Supervision plans for juveniles.

A. To provide for the public safety and address the needs of ~~subjects~~ a juvenile and ~~their families~~ that juvenile's family, ~~subjects~~ a juvenile shall be supervised according to a written individual supervision plan, developed in accordance with approved procedures and timeframes, that describes the range and nature of field and office contact with the ~~subject~~ juvenile, with the parents or guardians of ~~a~~ the juvenile ~~subject~~, and with other agencies or providers providing treatment or services.

~~B. When the youth resides in or is expected to return to the family home, the probation officer shall, in accordance with approved procedures, develop and implement a family involvement plan.~~

~~C. When the youth is in direct state care, the probation officer shall, in accordance with approved procedures and 6VAC35-150-420, send a report on the family's progress toward planned goals to the facility at which the juvenile is housed.~~

~~D. At least 60 days prior to a juvenile's anticipated release from commitment, a written parole supervision plan shall be prepared in accordance with approved procedures.~~

~~E. A supervision plan for parole shall be prepared for all judicial review hearings for serious juvenile offenders as required by law and in accordance with approved procedures.~~

~~F. If the court has not ordered specific conditions of supervision, a supervision plan for an adult probation subject shall be prepared within 30 days after disposition, after consulting with the adult and, if appropriate, his family.~~

~~G. At least once every 90 days, in~~ B. In accordance with approved procedures, each written individual supervision plan or family involvement plan shall be ~~(i)~~ reviewed with the ~~subject individual or~~ juvenile, the juvenile's family, and ~~(ii) reviewed by~~ a supervisor from both a treatment and a case management perspective to confirm the appropriateness of the plan.

6VAC35-150-355. Supervision of juvenile on electronic monitoring.

When a unit places a juvenile in an electronic monitoring program, use of the program shall be governed by approved procedures that shall provide for criteria for placement in the program, parental involvement, required contacts, consequences for tampering and violating program requirements, and time limits.

6VAC35-150-365. Supervision of adult on probation.

For an adult convicted of a criminal act for which the juvenile court retained jurisdiction pursuant to § 16.1-241 of the Code of Virginia and the juvenile court did not order specific conditions of supervision, a supervision plan for the adult probationer shall be prepared within 30 days of the disposition. The adult and that adult's family, if appropriate, must be consulted in development of the supervision plan.

6VAC35-150-370. ~~Placements in the community.~~ (Repealed.)

~~When the unit (i) is supervising and (ii) has placed a subject in a community facility or program, unit staff shall advise the facility or program of the subject's service needs and shall maintain contact with the subject and the facility or program staff in accordance with the supervision plan.~~

6VAC35-150-380. Violation of probation or parole.

When a ~~subject~~ probationer or parolee violates the conditions of the individual's probation or parole, unit personnel shall take action in accordance with approved procedures.

6VAC35-150-390. Transfer of case supervision ~~to another unit~~.

A. When ~~a subject's~~ the legal residence of an individual under the supervision of a CSU is not within the jurisdiction

of the original ~~court service unit~~ CSU, the supervision ~~cases~~ of the case may be transferred to another unit ~~providing similar services~~ in Virginia in accordance with § 16.1-295 of the Code of Virginia and approved procedures.

B. The director of the department may make provision for the transfer of a juvenile placed on probation in this Commonwealth to another state to be placed on probation under the terms of Article 14 (§ 16.1-323 et seq.) of Chapter 11 of Title 16.1 of the Code of Virginia.

6VAC35-150-400. Notice of release from supervision.

Notice of release from supervision shall be given to ~~subjects~~ the individual under the supervision of a CSU and to the parents or guardians of ~~juvenile subjects and~~ juveniles. Such notification shall be appropriately documented in the case record in accordance with approved procedures.

Article ~~7~~ 6
Juvenile in Direct Care

6VAC35-150-410. Commitment information.

A. When a ~~youth is transferred into direct state care, the following items either accompany or precede the youth to the reception and diagnostic center: the order of commitment, copies of clinical reports, predisposition studies, record of immunizations when available, and any other~~ juvenile is committed to the department, the juvenile may not be transported to the Reception and Diagnostic Center (RDC) until (i) the items and information required by the Code of Virginia~~, department policy, or~~ and approved procedures have been received by RDC and (ii) the case is accepted by RDC.

B. If a juvenile is ~~transferred~~ transported to the department directly from the court, in addition to ensuring the immediate delivery of the items required in subsection A of this section, unit staff shall immediately notify ~~the reception and diagnostic center~~ RDC by telephone of the ~~youth's~~ juvenile's impending arrival.

6VAC35-150-415. Supervision of juvenile in direct care.

A. When a juvenile is placed in direct care, the probation or parole officer shall, in accordance with approved procedures, do the following:

1. Develop and implement a family involvement plan.

2. Send a report on the family's progress toward planned goals to the facility at which the juvenile is housed.

B. Upon written notice of a juvenile's release from an indeterminate commitment, a written parole supervision plan shall be completed within 30 days of the date of notification. A juvenile who has been indeterminately committed shall not be accepted for parole supervision without a completed parole supervision plan, except as approved by the director of his designee.

C. A supervision plan for parole shall be prepared for all judicial review hearings for serious juvenile offenders as required by law and in accordance with approved procedures.

6VAC35-150-420. Contacts during ~~youth's~~ juvenile's commitment.

During the period of a ~~youth's~~ juvenile's commitment, a designated staff person shall make contact with the committed ~~youth~~ juvenile, the ~~youth's~~ juvenile's parents, guardians, or other custodians, and the treatment staff at the ~~youth's~~ juvenile's direct care placement as required by approved procedures. The procedures shall specify when ~~such~~ contact must be ~~in person~~ face-to-face contact and when ~~contacts~~ contacts may be made by video-conferencing or by telephone.

Part III
~~Standards for~~ Programs ~~and Services~~

Article 1
General Requirements ~~of Programs and Services~~

6VAC35-150-425. Applicability.

~~The following standards apply~~ A. This part applies to programs and services ~~(i)~~ for which the department or CSU contracts or ~~(ii) to which the CSU refers juveniles who are before the court or before an intake officer, including but not limited to programs and services included in a local~~ which provides programs and services through a local Virginia Juvenile Community Crime Control Act plan pursuant to § 16.1-309.3 of the Code of Virginia. The ~~standards~~ provisions for alternative day treatment and structured day programs~~, electronic monitoring, surveillance officers, and substance abuse and testing services~~ in Article 2 (6VAC35-150-615 et seq.) of this part also apply to those programs and services that are operated by ~~the court service unit~~ a CSU.

B. Each program or service provider shall be responsible for adopting written procedures necessary to implement and for compliance with all applicable requirements of 6VAC35-150-430 through 6VAC35-140-740.

6VAC35-150-427. ~~Written policies and procedures required.~~ (Repealed.)

~~Each program shall be responsible for adopting written policies and procedures necessary to implement all applicable requirements of 6VAC35-150-430 through 6VAC35-140-740.~~

6VAC35-150-430. ~~Written statements required~~ Program requirements.

A. Each ~~nonresidential~~ program ~~or service~~ shall have a written statement of its:

1. Purpose;

2. Population served;

3. Criteria for admission;

4. Criteria for measuring a juvenile's progress;

~~2.~~ 5. Supervision ~~and~~ or treatment objectives~~, including criteria for admission and for measuring a juvenile's progress~~;

6. Intake and acceptance procedures, including whether a social history or diagnostic testing is required;

~~3.~~ 7. General rules of juvenile conduct and the behavior management system with specific expectations for behavior and appropriate incentives and sanctions, which shall be made available to juveniles and parents upon acceptance into the program;

~~4.~~ 8. Criteria and procedures for terminating services, including terminations prior to the juvenile's successful completion of the program;

~~5.~~ 9. Methods and criteria for evaluating program effectiveness;

~~6.~~ 10. Drug-free workplace policy; and

~~7. Policy~~ 11. Procedures regarding contacts with the news media.

B. The department administration shall be notified in writing of any plan to change any of the elements listed in subsection A of this section.

C. Each program shall conduct background checks in accordance with 6VAC35-150-80, or ensure that such background checks are conducted, on all individuals who provide services to juveniles under the contract as required by subsection A of 6VAC35-150-80;

D. Those programs providing crisis intervention services, including, but not limited to, outreach detention, mental health counseling or treatment, and home-based counseling services, shall provide for responding 24 hours a day to a juvenile's crisis and shall provide notification to all juveniles in writing on how to access these services at any time.

6VAC35-150-435. Contracted services.

~~A. When a program contracts for services with public or private providers, it shall follow written procedures that govern the recruitment, screening and selection of providers.~~

~~B. Contracts with public or private sector service providers shall identify the case coordinator.~~

~~C. Designated program staff shall monitor the delivery of services under the terms of the contract.~~

~~D. Contracts with public or private service providers shall require the provider to:~~

~~1. Develop a plan for the scope of services to the individuals served;~~

~~2. Document receipt of the referral, services provided, and termination of services;~~

~~3. Make available to the purchasing agency all information specified in the contract;~~

~~4. Conduct the records checks required by 6VAC35-150-440 on all staff who provide services to individuals under the contract;~~

~~5. Participate in program evaluation as required by the Department of Juvenile Justice; and~~

~~6. Provide appropriate evidence of fiscal accountability and responsibility.~~

~~E.~~ The standard of services provided by contractual and subcontractual vendors shall not be less than those required by this chapter.

6VAC35-150-440. ~~Employee and volunteer background check.~~ (Repealed.)

~~A. An agency or program that provides direct services or supervision to juveniles shall conduct the following background checks on all employees and volunteers who provide such direct service or supervision to ascertain whether there are criminal acts or other circumstances that would be detrimental to the safety of juveniles in the program:~~

~~1. A reference check;~~

~~2. A fingerprint check with the Virginia State Police and FBI if the State Police determine that the requesting agency is a qualified entity, or a criminal history request or a noncriminal justice interface with the Virginia State Police if the State Police determine that the requesting agency is not a qualified entity to receive fingerprint based criminal information;~~

~~3. A central registry check with Child Protective Services; and~~

~~4. A driving record check if applicable to the individual's job duties.~~

~~The requirements of this subsection do not apply to programs that merely supervise juveniles in community service, nor to persons licensed by the Commonwealth of Virginia who are providing professional services to juveniles within the scope of such license.~~

~~B. When an agency or program refers juveniles to other service providers, excluding community service programs and licensed professionals in private practice, the referring agency shall require the service provider to document that all persons who provide services or supervision through substantial one-on-one contact with juveniles have undergone a background check as required in subsection A of this section.~~

~~C. An agency that refers juveniles to a licensed professional in private practice shall check with the appropriate licensing authority's Internet web page or by other appropriate means to ascertain whether there are notations of criminal acts or other circumstances that would be detrimental to the safety of juveniles.~~

6VAC35-150-450. Limitation of contact with juveniles.

When there are indications that an individual who is providing programs or services ~~has a physical, mental or emotional condition that might~~ may jeopardize the health or safety of the juveniles, the program administrator or department personnel ~~may~~ shall immediately require that the individual be removed from contact with juveniles until the situation is abated or resolved.

6VAC35-150-460. Personnel qualifications.

A. ~~Staff and volunteers~~ Program staff shall ~~be qualified and trained for the positions and duties~~ have a job description stating qualifications and duties for the position to which they are assigned.

B. Staff and volunteers who provide professional services shall be appropriately licensed or certified or be supervised by an appropriately licensed or certified person as required by ~~law~~ applicable statutes and regulations.

6VAC35-150-470. Medical emergencies.

The program or service provider shall have written ~~policy, procedure and practice~~ procedures to deal with medical emergencies that ~~might~~ may occur while a juvenile is in attendance at the program.

6VAC35-150-480. Financial record requirements.

All programs and ~~services~~ service providers shall:

1. Manage their finances in accordance with acceptable accounting procedures;

2. Certify that all funds were handled in accord with the applicable Virginia Juvenile Community Crime Control Act plan, contract, or other agreement; and

3. Be subject to independent audit or examination by department personnel at the department's discretion.

6VAC35-150-490. Juveniles' rights.

A. Juveniles shall not be excluded from a program nor be denied access to services on the basis of race, ethnicity, national origin, color, ~~creed~~ religion, ~~gender~~ sex, physical ~~handicap~~ disability, or sexual orientation.

B. Juveniles shall not be subjected to:

1. Deprivation of drinking water or food necessary to meet daily nutritional needs except as ordered by a licensed physician for a legitimate medical purpose and documented in the juvenile's record;

2. Any action ~~which~~ that is humiliating, degrading, or abusive;

3. Corporal punishment;

4. Unsanitary conditions;

5. Deprivation of access to toilet facilities; or

6. Confinement in a room with the door so secured that the juvenile cannot open it.

6VAC35-150-500. Juvenile participation in research.

~~A. Medical or pharmaceutical testing for experimentation or research is prohibited.~~

~~B.~~ The program or service provider shall have ~~either (i) a written policy prohibiting juveniles' participation in research or (ii) written policy, procedure and practice ensuring that juveniles' participation as subjects in human research shall be consistent with Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia, with § 16.1-305 of the Code of Virginia regarding confidentiality of juvenile records, with department policy regarding juveniles' participation in research, and with such regulations as may be promulgated by the state board regarding human research~~ written procedures complying with the applicable research provisions in 6VAC35-150-130.

6VAC35-150-510. Case management requirements.

A. For each juvenile, a separate case record shall be kept up to date and in a uniform manner.

B. The juvenile case record shall always contain:

1. ~~Identifying~~ Current identifying and demographic information on the juvenile;

2. Court order, placement agreement, or service agreement;

3. Rules imposed by the judge or the probation or parole officer, if applicable; and

4. ~~Date~~ Dates of acceptance and release.

C. Programs that provide counseling, treatment, or supervision shall:

1. Develop an individual service plan for each juvenile that shall specify the number and nature of contacts between the juvenile and staff;

2. Provide the individual service plan information to the supervising probation or parole officer, when applicable;

3. Document all contacts with the juvenile, the juvenile's family, and others involved with the case; and

4. Provide written progress reports to the referring agency at agreed upon intervals.

6VAC35-150-530. Incident documentation and reporting.

When an event or incident occurs ~~which~~ that is required by department procedures to be reported, the program ~~or service~~ shall document and report the event or incident as required by and in accordance with department procedures.

6VAC35-150-540. Child abuse and neglect.

~~Any case of suspected child abuse or neglect shall be reported~~ When there is a reason to suspect that a child is an abused or neglected child, the program or service provider shall report the matter immediately to the local department of ~~public welfare or~~ social services as required by ~~§ 63.1-248.3~~ Article 2 (§ 63.2-1508 et seq.) of Title 63.2 of the Code of Virginia and shall be documented in the juvenile's record.

~~Article 2~~
~~Specific Requirements for Particular Programs and Services~~

6VAC35-150-550. Physical setting.

A. Each program that provides ~~direct~~ services to juveniles or their families within or at the program's office or place of operation shall comply with all applicable building, fire, sanitation, zoning and other federal, state, and local standards and shall have premises liability insurance.

B. The inside and outside of all buildings shall be kept clean, in good repair, and free of rubbish.

6VAC35-150-560. ~~Individual service or contact plan.~~ (Repealed.)

~~Programs that provide counseling, treatment or supervision shall:~~

~~1. Develop an individual service plan for each juvenile which shall specify the number and nature of contacts between the juvenile and staff;~~

~~2. Provide the service plan information to the supervising probation or parole officer, when applicable, to be included in and monitored as part of the supervision plan;~~

~~3. Document all contacts with the juvenile, the juvenile's family and others involved with the case; and~~

~~4. Provide written progress reports to the referring agency at agreed upon intervals.~~

6VAC35-150-570. ~~Response to crises.~~ (Repealed.)

~~All programs providing supervision or direct individualized services shall provide for response to juveniles' crises 24 hours a day and shall notify juveniles in writing how to get these services.~~

6VAC35-150-590. ~~Referrals.~~ (Repealed.)

~~Each program and service that accepts referrals shall have a written description of:~~

~~1. The population to be served;~~

~~2. Its criteria and requirements for accepting referrals, including whether a social history and diagnostic testing is required before accepting a youth; and~~

~~3. Intake and acceptance procedures.~~

6VAC35-150-600. ~~Surveillance officers.~~ (Repealed.)

~~Programs that use staff or volunteer surveillance officers shall specify:~~

~~1. The nature and number of the surveillance officer's contacts with the youth under supervision;~~

~~2. How and to whom the officer will report such contacts and any problems identified.~~

6VAC35-150-610. ~~Substance abuse and testing services.~~ (Repealed.)

~~Programs that provide substance abuse and testing services shall have a written description of:~~

~~1. The substance abuse assessment tools or instruments used;~~

~~2. The training required of persons who will conduct testing and the professional license or certification required of staff or contracted providers who will provide treatment services; and~~

~~3. How and to whom the results of the assessment and evaluation and any recommendations for treatment or other services will be reported.~~

Article 2
Alternative Day Treatment and Structured Day Programs

6VAC35-150-615. Applicability of Part III, Article 2.

The following provisions apply to alternative day treatment and structured day treatment programs, including those operated by CSUs. All applicable provisions for the general requirements for programs set forth in Article 1 (6VAC35-150-425 et seq.) of this part also apply to alternative day treatment and structured day treatment programs.

~~Article 3~~
~~Alternative Day Treatment and Structured Day Programs~~

6VAC35-150-620. Supervision of juveniles.

~~A.~~ At all times that juveniles are on any premises where alternative day treatment or structured day programs are provided, there shall be at least one qualified person actively supervising who has a current first aid and CPR certification.

~~B. Program staff are responsible for managing juveniles' behavior, and shall not delegate this responsibility to other juveniles except as part of an approved leadership training program under the supervision of qualified staff.~~

6VAC35-150-640. ~~Fire~~ Emergency and fire safety.

A. Each site to which juveniles report shall have ~~a~~ written emergency and fire ~~plan~~ safety plans.

1. In accordance with the emergency plan, the program shall implement safety and security procedures, including, but not limited to, procedures for responding in cases of a fire, bomb threat, hostage and medical emergency situations, and natural disaster.

2. The fire safety plan shall be developed with the consultation and approval of the appropriate local fire authority and reviewed with the local fire authority at least annually and updated if necessary.

B. At each site to which juveniles report, there shall be at least one documented fire drill each month.

C. Each new staff member shall be trained in fire safety and emergency procedures before assuming supervision of juveniles.

6VAC35-150-650. ~~First-aid kits.~~ (Repealed.)

~~A well-stocked first-aid kit shall be available at each site to which juveniles report and in any vehicle used to transport juveniles and shall be readily accessible for minor injuries and medical emergencies.~~

6VAC35-150-660. ~~Delivery of medication.~~ (Repealed.)

~~Written policy, procedure and practice governing the delivery of medication shall either (i) prohibit staff from delivering medication or (ii) designate staff persons authorized to deliver prescribed medication by written agreement with a juvenile's parents; and shall either (i) permit or (ii) prohibit self-medication by juveniles.~~

6VAC35-150-670. Juveniles' medical needs.

~~When necessary,~~ A. At the time of referral, the program ~~staff~~ shall ~~be notified of~~ request from the referring agency or party any information regarding individual juveniles' medical needs or restrictions and ~~given specific~~, if necessary, instructions for meeting these needs.

B. Written procedure governing the delivery of medication shall:

1. Either prohibit staff from delivering medication or designate staff persons authorized to deliver prescribed medication by written agreement with a juvenile's parents; and

2. Either permit or prohibit self-medication by juveniles.

C. An up-to-date, well-stocked first-aid kit shall be available at each site to which juveniles report and shall be readily accessible for minor injuries and medical emergencies.

6VAC35-150-680. Physical and mechanical ~~restraint~~ restraints and chemical agents.

A. Only staff who have received ~~department-sanctioned~~ department-approved training may apply physical restraint, and only when a juvenile's uncontrolled behavior could result in harm to self or others, or to avoid extreme destruction of property, and when less restrictive interventions have failed.

B. The use of physical restraint shall be only that which is minimally necessary to protect the juvenile or others.

C. Any application of physical restraint shall be fully documented in the juvenile's record as to date, time, staff involved, circumstances, reasons for use of physical restraint, and extent of physical restraint used.

~~D. Except in electronic monitoring and outreach detention programs serving juveniles who would otherwise be placed in secure detention or when a juvenile resists being taken into lawful custody, the use of mechanical devices to restrain a juvenile's behavior is prohibited.~~

~~E.~~ D. The use of mechanical restraint devices, except in outreach detention and electronic monitoring programs, or chemical ~~substances~~ agents ~~to restrain a juvenile's behavior~~ is prohibited.

6VAC35-150-690. Procedural requirements for time-out.

A. A program that uses time-out shall have written ~~policy, procedure and practice~~ procedures to provide that juveniles in time-out shall:

1. Be able to communicate with staff;

2. Have bathroom privileges according to need; and

3. Be served any meal scheduled during the time-out period.

B. A time-out room shall not be locked nor the door secured in any way that will prohibit the juvenile from opening it, except if such confinement has been approved by the program's regulatory authority.

C. Time-out shall not be used for periods longer than 30 consecutive minutes.

~~Article 4~~
~~Electronic Monitoring~~

6VAC35-150-700. ~~Not an automatic condition of supervision.~~ (Repealed.)

~~Electronic monitoring shall not be an automatic condition of probation, parole or predispositional supervision.~~

6VAC35-150-710. ~~Conditions of home and parents.~~ (Repealed.)

~~A. Juveniles in an electronic monitoring program must reside in their own home or a surrogate home.~~

~~B. Before a juvenile is placed on electronic monitoring, parents or guardians must:~~

~~1. Give written consent, unless the electronic monitoring is ordered by a court of competent jurisdiction; and~~

~~2. Be fully oriented to the operation of the electronic monitoring device and program rules.~~

6VAC35-150-720. ~~Required contacts.~~ (Repealed.)

~~As often as required by the written supervision or service plan, designated staff or volunteers shall:~~

~~1. See each juvenile face to face; and~~

~~2. Contact the juvenile's parents or guardians in person or by telephone.~~

6VAC35-150-730. ~~Tampers and violations.~~ (Repealed.)

~~The program shall have written policy, procedure and practice for responding to and investigating tampers and program violations.~~

6VAC35-150-740. ~~Time limits.~~ (Repealed.)

~~Written policy, procedure and practice shall establish the maximum time a juvenile may be electronically monitored but shall not permit electronic monitoring to extend beyond 45 days unless an individual case, upon review by the program administrator, meets specific written criteria justifying a longer time period or continued electronic monitoring is ordered by a court of competent jurisdiction.~~

DOCUMENTS INCORPORATED BY REFERENCE (6VAC35-150)

"Guidelines for Transporting Juveniles in Detention," ~~Board of Youth and Family Services, June 13, 1991~~ State Board of Juvenile Justice, September 2004.

~~"Guidelines for Custody Investigations," Board of Juvenile Justice and Board of Social Services, 1995.~~

VA.R. Doc. No. R08-1226; Filed June 9, 2009, 9:39 a.m.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Proposed Regulation

REGISTRAR'S NOTICE: Due to the length, the following regulations filed by the Virginia Waste Management Board (9VAC20-80, Solid Waste Management Regulations; 9VAC20-81, Solid Waste Management Regulations; and 9VAC20-101, Vegetative Waste Management and Yard Waste Composting Regulations) are not being published. However, in accordance with § 2.2-4031 of the Code of Virginia, the summary is being published in lieu of the full text. The regulations are available for public inspection at the office of the Registrar of Regulations and at the Virginia Waste Management Board (see contact information below) and is accessible on the Virginia Register of Regulations website at http://register.dls.virginia.gov/vol25/Welcome.htm.

Titles of Regulations: **9VAC20-80. Solid Waste Management Regulations (repealing 9VAC20-80-10 through 9VAC20-80-790).**

9VAC20-81. Solid Waste Management Regulations (adding 9VAC20-81-10 through 9VAC20-81-760).

9VAC20-101. Vegetative Waste Management and Yard Waste Composting Regulations (repealing 9VAC20-101-10 through 9VAC20-101-210).

Statutory Authority: § 10.1-1402 of the Code of Virginia; 42 USC § 6941 et seq., 40 CFR Part 258.

Public Hearing Information:

August 3, 2009 - 10 a.m. - Department of Environmental Quality, 629 East Main Street, 2nd Floor Conference Room, Richmond, VA

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

Agency Contact: Leslie D. Beckwith, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4123, FAX (804) 698-4237, or email ldbeckwith@deq.virginia.gov.

Basis: Section 10.1-1402 and 10.1-1408.1 of the Code of Virginia authorize the board to supervise and control waste management activities in the Commonwealth and to promulgate regulations necessary to carry out its powers and duties. The corresponding federal authority for the criteria for municipal solid waste landfills is found at 40 CFR Parts 257 and 258. The federal authority for municipal solid waste landfills is mandatory. The state legal authority for all other types of facilities is also mandatory.

Purpose: The proposed regulation is needed to coordinate waste management practices with statute amendments, other agencies and other programs, and to address issues and questions that have arisen since the regulations were last modified. The current solid waste regulation is cumbersome as the result of several amendments that were not able to address the cohesiveness of the regulation as a whole. This amendment is intended to concentrate on clarity, conciseness of writing, and efficiency of the entire structure of the regulation while retaining compatibility with the U.S. Environmental Protection Agency (EPA) program approval and statutory requirements. The purpose of this amendment is to review each section of the regulation for clarity and complexity in order to transform it into a standard that is easier for the public and regulated community both to read and to follow. The goals of this amendment are to improve

standards, focus on results-oriented requirements where feasible, make the regulations clear and enforceable, and to provide less burdensome requirements for those types of facilities that divert waste from landfills while still protecting the public health, public safety, the environment, and natural resources.

Substance: The agency proposes to incorporate the Vegetative Waste and Yard Waste Composting Regulations into the Virginia Solid Waste Management Regulations and to recodify the Virginia Solid Waste Management Regulations, 9VAC20-80 into 9VAC20-81. The agency also proposes to include the consolidation of related topics; revisions to conform to existing statutes; the consolidation of exemptions and exclusions into one section; inclusion of the unauthorized waste control program in the operation section of each type of solid waste facility to eliminate confusion; citation to the Federal Solid Waste Regulations where feasible; consolidation of details about beneficial use demonstrations; consolidation of Sanitary, Industrial, and Construction-Demolition-Debris (CDD) disposal facility standards; and consolidation of Solid Waste Storage and Treatment facility standards. New standards for centralized sludge treatment facilities are added, permit modifications are streamlined, statutory provisions are incorporated where feasible, and a preapproved alternate liner has been added to eliminate the variance process for those alternate liners routinely approved. Also composting permitting requirements are made less burdensome to encourage these types of activities.

Issues: The proposed actions make the regulations easier to read and research for both private citizens and businesses. A major advantage to the agency and the regulated community are the proposed streamlined permitting review procedures that will result in improved efficiency of available department resources. One potential issue that may arise will include the education and training of staff and the regulated community to understand the recodification of the current regulation from 9VAC20-80 to 9VAC20-81. Guidance and reference documents are being developed to address this issue. There are no potential disadvantages to the public or the Commonwealth from adopting the proposed amendments.

Requirements more restrictive than federal: The RCRA Subtitle D program is not a program that is enforced directly by SEPA. It includes a basic solid waste management program with many state options that are adopted and administered by the states. The federal program has not developed standards for facilities that are not municipal solid waste management facilities; Virginia regulates CDD, industrial landfills, incinerators and other solid waste facilities. The proposed amendment maintains compatibility with EPA program approval for Subtitle D facilities and contains requirements for non-Subtitle D facilities, which are broader in scope than federal requirements.

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

Summary of the Proposed Amendments to Regulation. Virginia Waste Management Board proposes to 1) no longer necessitate a full permit application for changes made to the operations manual of a solid waste facility, 2) remove the composting facility capacity limit for a full permit and to allow them to obtain a permit by rule, 3) to reduce the number of permit modifications considered major, 4) to create a new facility type for permitting purposes, 5) to remove the Phase I groundwater monitoring, 6) to change the adoption of alternate concentration limit from a variance procedure to an approval procedure, and 7) to format, reorganize, and edit in order to improve clarity and streamline the flow of language.

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

Estimated Economic Impact. One of the proposed changes will no longer necessitate a full permit application for changes made to the operations manual of a solid waste facility. Currently, when a facility makes a change to its operations manual, it must do that by going through the permit process as the operations manual is currently considered to be a part of the permit. Under the proposed changes, a facility will be able to change their operations manual without triggering a permit process. This will save the Department of Environmental Quality (DEQ) administrative resources that would have otherwise been spent on reviewing the change. It will also save facility owners the application fees, and consultant fees involved in the permit review process. In 2008, most of the 15 major amendment applications were related to operations manual changes and of the 54 minor amendments, 14 were related to operations manual revisions. The current major amendment fee is $7,050.

Another proposed change will affect how composting facilities are regulated. Currently any composting facility with capacity over 700 tons per quarter has to get a full permit from DEQ. Under the proposed changes, the cap will be removed and these facilities will be allowed to obtain a permit by rule as long as they fulfill the necessary criteria. This will save facilities the expenses that would have otherwise been required to obtain permits. The fee for a compost full permit is $12,670 which is considerable higher than the $390 permit by rule fee. It takes approximately 18 to 24 months to obtain a full permit while it takes about 30 days to obtain a permit by rule. The application costs could be more than $200,000 for a full permit while permit by rule application may cost about $50,000 to $100,000. Also, removal of the need for a full permit is expected to encourage the amount of wastes composted in Virginia.

Another proposed change will reduce the number of modifications considered major from an estimated 30 types to 13 types. DEQ evaluated what is a major environmental

impact and what is not when revising the criteria to categorize what would be considered as a major modification. This is expected to reduce the number of major modification applications and evaluations in a given year and save money and resources to both the regulated facilities and DEQ. The current major amendment fee is $7,050.

Another proposed change will create a new facility type for permitting purposes. The new type of facilities is Centralized Waste Treatment Facilities. Currently some facilities dealing with industrial sludge are regulated as materials recovery facilities, but the DEQ reports issues for regulating them under materials recovery facilities regulations. To address the issues a new facility type is proposed with a set of more appropriate requirements that would apply to them.

Another change will remove the Phase I groundwater monitoring. Currently, landfills are required to collect groundwater samples for monitoring periodically. In phase I, a testing for indicators for pollutants is performed. If a limit is exceeded in Phase I, Phase II testing is performed where the testing is performed to detect specific pollutants themselves not the indicators. According to DEQ, the performance of Phase I indicators is poor and causing many false positives and triggering a Phase II testing. The proposed regulations will remove the Phase I testing and require facilities to test for the pollutants directly. This is expected to save the costs involved in Phase I testing as in almost all cases Phase I results lead to Phase II testing. DEQ estimates that only 12 landfills out of 239 are currently doing only Phase I testing. While the testing costs of these 12 facilities will likely increase, approximately five of them will be eligible to request a reduced constituent list which will somewhat mitigate any potential increase in their compliance costs. In addition, three of the 12 are in the process of terminating post closure care and will likely no longer be monitoring groundwater by the time the proposed regulations are effective.

Another proposed regulation will change the adoption of alternate concentration limit from a variance procedure to an approval procedure. Under the current regulations, alternate concentration limits for constituents for which there is no federal maximum concentration limit are established through a variance procedure. Under the proposed regulations, alternate concentration limits will be established through an approval process. Also, the proposed regulations will provide a preapproved alternate liner system in order to eliminate the variance process for those alternate liners which are routinely approved. These changes are expected to provide some savings in administrative resources to both facility owners and DEQ.

All of the remaining changes are mainly formatting, reorganization, and editorial changes and are not expected to create any significant economics effect other that providing some small savings in term of making it easier to follow and understand the regulations and possibly reducing communication costs.

Businesses and Entities Affected. The proposed regulations apply to solid waste facilities. Approximately 222 landfills are regulated. Of these approximately 130 are municipal or county government owned and the rest are owned by private corporations. Less than 40 facilities are estimated to be small businesses.

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

Projected Impact on Employment. The proposed regulations in general are expected to reduce administrative burden on regulants as well as on DEQ which may reduce the demand for labor. However, the affected entities may use their savings in administrative resources and increase their demand for labor elsewhere.

Effects on the Use and Value of Private Property. The proposed regulations are expected to have a positive impact on the asset value of private businesses as they are expected to experience a reduction in their administrative compliance costs and improve their profits.

Small Businesses: Costs and Other Effects. The proposed regulations are expected to provide over all cost savings rather than increasing costs.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulations are not expected to have overall adverse impact on small businesses.

Real Estate Development Costs. No significant effect on real estate development costs is expected.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected

small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

This proposed action recodifies the Virginia Solid Waste Management Regulations and incorporates the Vegetative Waste and Yard Waste Composting Regulations into the regulations. The proposed regulations (i) no longer necessitate a full permit application for changes made to the operations manual of a solid waste facility; (ii) remove the composting facility capacity limit for a full permit and allow a facility to obtain a permit by rule; (iii) reduce the number of permit modifications considered major; (iv) add new standards for centralized sludge treatment facilities; (v) remove the Phase I groundwater monitoring; (vi) change the adoption of alternate concentration limit from a variance procedure to an approval procedure; (vii) modify language to conform to existing statutes and add citations to federal regulations; (viii) add a preapproved alternate liner to eliminate the variance process for those alternate liners routinely approved; (ix) make composting permitting requirements less burdensome; and (x) format, reorganize, and edit the regulations to improve clarity and streamline the flow of language.

VA.R. Doc. No. R08-979; Filed June 2, 2009, 11:25 a.m.

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TITLE 11. GAMING

CHARITABLE GAMING BOARD

Proposed Regulation

Title of Regulation: **11VAC15-22. Charitable Gaming Rules and Regulations (amending 11VAC15-22-10, 11VAC15-22-40, 11VAC15-22-50, 11VAC15-22-80).**

Statutory Authority: §§ 2.2-2456, 18.2-340.15, and 18.2-340.19 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

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

Agency Contact: Betty Bowman, Director, Division of Charitable Gaming, 101 N. 14th Street, 17th Street, James Monroe Bldg, Richmond, VA 23219, telephone (804) 786-3015, FAX (804) 786-1079, or email betty.bowman@dcg.virginia.gov.

Basis: Section 18.2-340.15 of the Code of Virginia gives the Charitable Gaming Board the authority to promulgate regulations under which gaming shall be conducted. Section 18.2-340.19 of the Code of Virginia describes the regulations the board can promulgate. Section 2.2-2456 of the Code of Virginia describes the duties of the board, including the authority to promulgate regulations.

Purpose: These changes do not have any adverse impact on the health, safety, or welfare to the citizens of Virginia. The impact is directly to charitable organizations that have been designated by the internal revenue service as 501(c) not-for-profit entities that manage and report their gaming operations to the division. The changes for 2007 are directly related to financial reporting and how they report game operations.

Substance: The Charitable Gaming Board proposes several amendments to these regulations to reflect changes to the Code of Virginia pursuant to the 2007 Acts of Assembly. Additionally, the board proposes to (i) specify that paid callers and managers may not play bingo at any session they have worked and may not purchase instant bingo, pull-tab, or seal card products from organizations they assist on the day they have worked or later from any deal they have helped sell, (ii) no longer allow organizations to substitute an annual financial report for a quarterly report, (iii) cap cumulative late fees for report filing at $750, and (iv) add clarifying definitions.

Issues: Changes were due to legislative mandates from the 2007 Acts of Assembly. The existing regulations are not reflective of these actions and no other alternatives were considered. It is anticipated that the proposed regulatory action will pose no disadvantages to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Charitable Gaming Board (Board) proposes several amendments to these regulations to reflect changes to the Code of Virginia pursuant to the 2007 Acts of Assembly. Additionally, the board proposes to 1) specify that paid callers and managers may not play bingo at any session they have worked and may not purchase instant bingo, pull-tab, or seal card products from organizations they assist on the day they have worked or later from any deal they have helped sell, 2) no longer allow organizations to substitute an annual financial report for a quarterly report, 3) cap cumulative late fees for report filing at $750, and 4) add clarifying definitions.

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

Estimated Economic Impact. The current regulations specify that volunteer game workers may not play bingo at any session they have worked after the session has started. Volunteer game workers may not purchase directly or through others instant bingo, pull-tab, or seal card products from organizations they assist on the day they have volunteered or from any deal they have helped sell, whichever is later.

There have been some reported instances where paid callers and managers have played bingo at sessions where they have worked.[1] According to the Department of Charitable Gaming (Department), it was not the intent of the board to ban volunteer game workers from playing bingo at sessions where they work, but permit paid workers to do so. Having paid workers be possible winners does put the fairness of the games into question. Therefore the board proposes to specify that paid callers and managers may not play bingo at any session they have worked and may not purchase instant bingo, pull-tab, or seal card products from organizations they assist on the day they have worked or later from any deal they have helped sell. Specifying this in the regulations will make it easier for the board to enforce this prohibition. Thus adding this language to these regulations should produce a net benefit.

Under both the current and proposed regulations, organizations realizing any gross gaming receipts in any calendar quarter are required to file a quarterly report of receipts and disbursements on a form prescribed by the department. The current regulations allow the annual financial report to substitute for a quarterly report if the organization has no further charitable gaming income during the remainder of the reporting period and the annual report is filed by the due date for the applicable calendar quarter. The Board proposes to no longer permit the annual report to substitute for a quarterly report. According to the department, it is not uncommon for charitable organizations staffed by volunteers to lose track of their administrative duties. The department believes that requiring organizations to report quarterly without exception will make it less likely that they will have to shutdown charitable games due to poor management. The Department estimates that if organizations file their quarterly reports through the department website it should only take about five minutes of their time, and perhaps an hour for those without Internet access. If requiring organizations to report quarterly without exception does in fact make it less likely that some charitable games will have to be shutdown due to poor management, then the proposal will likely produce a net benefit since the cost of complying is so small.

Under both the current and proposed regulations, organizations failing to file required reports, request an extension or make fee payments when due are charged a penalty of $25 per day. The current regulations place no limit on accumulated fees. The board proposes to no longer add to late fees beyond 30 days and $750. The board believes that greater penalties do not significantly add to the incentive for organizations to submit reports and take away from the benefits to the public of these charitable organizations. Thus capping late fees late will likely produce a net benefit.

Businesses and Entities Affected. The proposed amendments affect the 560 charitable organizations in the Commonwealth.[2]

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

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

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

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

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

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

[1] Source: Department of Charitable Gaming

[2] Datum source: Department of Charitable Gaming

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

Summary:

The proposed amendments (i) clarify and add definitions; (ii) specify that paid callers and managers may not play bingo at any session they have worked and may not purchase instant bingo, pull-tab, or seal card products from organizations they assist on the day they have worked or later from any deal they have helped sell; (iii) no longer allow organizations to substitute an annual financial report for a quarterly report; and (iv) cap cumulative late fees at $750 for late report filing.

Part I
Definitions

11VAC15-22-10. Definitions.

In addition to the definitions contained in § 18.2-340.16 of the Code of Virginia, the words and terms below, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Bingo caller" means an individual who operates the equipment used for the random selection of bingo numbers and announces the selected bingo numbers during the bingo session.

"Bingo manager" or "game manager" means an individual who is a bona fide member of the organization and has been designated by the organization's management as being responsible for the operation of a particular session, for ensuring the compliance of the specific session with all applicable laws and rules and regulations, and who is present during the conduct of the designated session.

"Board" means the Virginia Charitable Gaming Board.

"Board of directors" means the board of directors, managing committee, or other supervisory body of a qualified organization.

"Calendar day" means the period of 24 consecutive hours commencing at 12:01 a.m. and concluding at midnight.

"Calendar week" means the period of seven consecutive calendar days commencing at 12:01 a.m. on Sunday and ending at midnight the following Saturday.

"Cash" means United States currency or coinage.

"Concealed face bingo card" means a nonreusable bingo card constructed to conceal the card face. This type of card is commonly referred to under trade names such as "Tear-open" or "Bonanza Bingo."

"Conduct" means the actions associated with the provision of a gaming operation during and immediately before or after the permitted activity, which may include, but not be limited to (i) selling bingo cards or packs, electronic devices, instant bingo, or pull-tab cards, or raffle tickets; (ii) calling bingo games; (iii) distributing prizes; and (iv) any other services provided by volunteer workers.

"DCG number" means a unique identification number issued by the department.

"Daubing" means covering a square containing a number called with indelible ink or otherwise concealing the number on a card or an electronic facsimile of a card.

"Deal" means each separate package or series of packages consisting of one game of instant bingo, pull-tabs, or seal cards with the same serial number.

"Decision bingo" means a bingo game where the cost to a player to play is dependent on the number of balls called and the prize payout is in direct relationship to the number of participants and the number of balls called, but shall not exceed statutory prize limits for a regular bingo game.

"Department" means the Virginia Department of Charitable Gaming.

"Director" means the Director of the Virginia Department of Charitable Gaming.

"Discount" means any reduction in cost of admission or game packs or any other purchases through use of coupons, free packs, or other similar methods.

"Disinterested player" means a player who is unbiased.

"Disposable paper card" means a nonreusable, paper bingo card manufactured with preprinted numbers.

"Door prize" means any prize awarded by the random drawing or random selection of a name or number based solely on attendance at a gaming session.

"Electronic bingo device" means an electronic device that uses proprietary software or hardware, or in conjunction with commonly available software and computers, displays facsimiles of bingo cards and allows a player to daub such cards.

"Fiscal year" or "annual reporting period" means the 12-month period beginning January 1 and ending December 31 of any given year.

"Flare" means a piece of paper, cardboard, or similar material that bears printed information relating to the name of the manufacturer or logo, name of the game, card count, cost per play, serial number, the number of prizes to be awarded, and the specific prize amounts in a deal of instant bingo, pull-tab, or seal cards.

"Free space number," "perm number," "center number," "card number" or "face number" means the number generally

printed in the center space of a bingo card that identifies the unique pattern of numbers printed on that card.

"Game program" means a written list of all games to be played including, but not limited to, the sales price of all bingo paper and electronic bingo devices, pack configuration, prize amounts to be paid during a session for each game, and an indication whether prize amounts are fixed or are based on attendance.

"Immediate family" means one's spouse, parent, child, sibling, grandchild, grandparent, ~~mother-or~~ mother-in-law, father-in-law, or stepchild.

"Interested persons" means the president, an officer, or bingo manager of any qualified organization ~~which~~ that is exempt or is a permit applicant or holds a permit to conduct charitable gaming or the owner, director, officer, or partner of an entity engaged in supplying charitable gaming supplies to organizations.

"IRS" means the United States Internal Revenue Service.

"Lucky Seven" means a bingo game as authorized in § 18.2-340.33 (9a) (b) of the Code of Virginia.

"Management" means the provision of oversight of a gaming operation, which may include, but is not limited to, the responsibilities of applying for and maintaining a permit or authorization, compiling, submitting, and maintaining required records and financial reports, and ensuring that all aspects of the operation are in compliance with all applicable statutes and regulations.

"Manufacturer" means a person who assembles from raw materials or subparts a completed piece of bingo or other charitable gaming equipment or supplies. "Manufacturer" also means a person who modifies, converts, adds, or removes parts to or from bingo or other charitable gaming equipment or supplies to further their promotion or sale for the conduct of charitable gaming.

"Operation" means the activities associated with production of a charitable gaming activity, which may include, but not be limited to (i) the direct on-site supervision of the conduct of charitable gaming; (ii) coordination of volunteers; and (iii) all responsibilities of charitable gaming designated by the organization's management.

"Owner" means any individual with financial interest of 10% or more in a supplier.

"Pack" means sheets of bingo paper or electronic facsimiles assembled in the order of games to be played. This may include specials ~~and jackpots~~, but shall not include any bingo jackpots, winner-take-all, Lucky Seven, or raffle.

"Prize" means cash, merchandise, certificate, or other item of value awarded to a winning player.

"Progressive seal card" means a seal card game in which a prize is carried forward to the next deal if not won when a deal is completed.

"Remuneration" means payment in cash or the provision of anything of value for goods provided or services rendered.

"Seal card" means a board or placard used in conjunction with a deal of the same serial number ~~which~~ that contains one or more concealed areas that, when removed or opened, reveal a predesignated winning number, letter, or symbol located on that board or placard.

"Serial number" means a unique number printed by the manufacturer on each bingo card in a set, each instant bingo, pull-tab, or seal card in a deal, each electronic bingo device, or each door prize ticket.

"Series number" means the number of unique card faces contained in a set of disposable bingo paper cards or bingo hard cards. A 9000 series, for example, has 9000 unique faces.

"Session" means a period of time during which one or more bingo games are conducted that begins with the selection of the first ball for the first game and ends with the selection of the last ball for the last game.

"Treasure chest" means a raffle including a locked treasure chest containing a prize that a participant, selected through some other authorized charitable game, is afforded the chance to select from a series of keys a predetermined key that will open the locked treasure chest to win a prize.

"Use of proceeds" means the use of funds derived by an organization from its charitable gaming activities ~~which~~ that are disbursed for those lawful religious, charitable, community, or educational purposes. This includes expenses relating to the acquisition, construction, maintenance, or repair of any interest in the real property involved in the operation of the organization and used for lawful religious, charitable, community, or educational purposes.

"WINGO" is a variation of a traditional bingo game that uses visual devices rather than a verbal caller and is played by hearing impaired persons.

Part III
Conduct of Games, Rules of Play, Electronic Bingo

11VAC15-22-40. Conduct of bingo, instant bingo, pull-tabs, seal cards, and raffles.

A. Organizations subject to this chapter shall post their permit at all times on the premises where charitable gaming is conducted.

B. No individual shall provide any information or engage in any conduct that alters or is intended to alter the outcome of any charitable game.

C. Individuals under 18 years of age may play bingo provided such persons are accompanied by a parent or legal guardian. It shall be the responsibility of the organization to ensure that such individuals are eligible to play. An organization's house rules may further limit the play of bingo or purchase raffle tickets by minors.

D. Individuals under the age of 18 may sell raffle tickets for a qualified organization raising funds for activities in which they are active participants.

E. No individual under the age of 18 may participate in the management or operation of bingo games. Individuals 14 through 17 years of age may participate in the conduct of a bingo game provided the organization permitted for charitable gaming obtains and keeps on file written parental consent from the parent or legal guardian and verifies the date of birth of such youth. An organization's house rules may further limit the involvement of minors in the conduct of bingo games.

F. No qualified organization shall sell any instant bingo, pull-tab, or seal card to any individual under 18 years of age. No individual under 18 years of age shall play or redeem any instant bingo, pull-tab, or seal card.

G. Immediate family members of bona fide members and surviving spouses of deceased bona fide members may participate as volunteer game workers.

H. All volunteer game workers shall have in their possession a picture identification, such as a driver's license or other government-issued identification, while participating in the management, operation, or conduct of a bingo game.

I. A game manager who is a bona fide member of the organization and is designated by the organization's management as the person responsible for the operation of the bingo game during a particular session shall be present any time a bingo game is conducted.

J. Organizations shall ensure that all charitable gaming equipment is in working order before charitable gaming activities commence.

K. Any organization selling bingo, instant bingo, pull-tabs, or seal cards shall:

1. Maintain a supplier's invoice or a legible copy thereof at the location where the gaming is taking place and cards are sold. The original invoice or legible copy shall be stored in the same storage space as the gaming supplies. All gaming supplies shall be stored in a secure area that has access limited only to bona fide members of the organization; and

2. Pay for all gaming supplies only by a check drawn on the charitable gaming account of the organization.

A complete inventory of all such gaming supplies shall be maintained by the organization on the premises where the gaming is being conducted.

L. A volunteer working a bingo session may receive complimentary food and nonalcoholic beverages provided on premises, as long as the retail value of such food and beverages does not exceed $15 for each session.

M. Permitted organizations shall not commingle records, supplies, or funds from permitted activities with those from instant bingo, pull-tabs, or seal cards sold in social quarters in accordance with § 18.2-340.26:1 of the Code of Virginia.

N. Individuals who are not members of an organization or are members who do not participate in any charitable gaming activities may be paid reasonable fees for preparation of quarterly and annual financial reports.

O. No free packs, free electronic bingo devices, discounts, or remuneration in any other form shall be provided directly or indirectly to volunteers, members of their family, or individuals residing in their household. The reduction of tuition, dues, or any fees or payments due as a result of a member or shareholder, or anyone in their household, working bingo games or raffles is prohibited.

P. Individuals providing security for an organization's charitable gaming activity shall not participate in the charitable gaming activity and shall not be compensated with charitable gaming supplies or with rentals of electronic bingo devices.

Q. No organization shall award any prize money or any merchandise valued in excess of the amounts specified by the Code of Virginia.

R. Multiple bingo sessions shall be permitted in a single premises as long as the sessions are distinct from one another and are not used to advertise or do not result in the awarding of more in prizes than is permitted for a single qualified organization. All leases for organizations to conduct charitable gaming in a single premises shall be for sessions separated by an interval of at least one hour. Bingo sales for the subsequent session may take place during the one-hour break once the building is cleared of all patrons and workers from the previous session.

S. All bingo and instant bingo, pull-tabs, or seal card sales must occur within the time specified on the charitable gaming permit.

T. Instant bingo, pull-tabs, or seal cards shall only be sold in conjunction with a regular bingo session, except as provided in § 18.2-340.26:2 of the Code of Virginia.

U. No sales of instant bingo, pull tabs, or seal ~~card sales~~ cards sold in conjunction with a regular bingo session shall take place more than two hours before or after a session. If multiple sessions are held at the same location, no instant bingo, pull-tab, or seal card sales shall be conducted during the required one hour break between sessions. The department may take action if it believes that a regular bingo session is not legitimate or is being conducted in a manner

such that instant bingo, pull-tabs, or seal cards are not being sold in conjunction with a normal, regular bingo session.

~~U.~~ V. Only a volunteer game worker of qualified organizations may rent, exchange, or otherwise provide electronic bingo devices to players.

~~V.~~ W. A qualified organization shall conduct only bingo games and raffles listed on a game program for that session. The program shall list all prize amounts. If the prize amounts are determined by attendance or at the end of a game, the game program shall list the attendance required for the prize amount or disclose that prizes shall be determined at the end of a game and the method for determining the prize amount. In such case, the organization shall announce the prize amount at the end of the game.

~~W.~~ X. A qualified organization selling instant bingo, pull-tabs, or seal cards shall post a flare provided by the manufacturer at the location where such cards are sold. All such sales and prize payouts shall be in accordance with the flare for that deal.

~~X.~~ Y. Only qualified organizations, facilities in which qualified organizations play bingo and suppliers permitted by the department shall advertise a bingo game. Providing players with information about bingo games through printed advertising is permitted, provided the name of the qualified organization shall be in a type size equal to or larger than the name of the premises, hall, or the word "bingo." Printed advertisements shall identify the use of proceeds percentage reported in the past quarter or fiscal year.

~~Y.~~ Z. Raffles ~~which~~ that award prizes based on a percentage of gross receipts shall use prenumbered tickets.

~~Z.~~ AA. The following rules shall apply to instant bingo, pull-tab, or seal card dispensing devices:

1. A dispenser shall only be used at a location and time during which a qualified organization holds a permit to conduct charitable gaming. Only cards purchased by an organization to be used during the organization's charitable gaming activity shall be in the dispenser.

2. Keys to the dispensing area and coin/cash box shall be in the possession and control of the game manager or designee of the organization's board of directors at all times. Keys shall at all times be available at the location where the dispensing device is being used.

3. The game manager or designee shall provide access to a department agent for inspection upon request.

4. Only a volunteer game worker of an organization may stock the device, remove cash, or pay winners' prizes.

~~AA.~~ BB. Organizations shall only purchase gaming supplies from a supplier or manufacturer who has a current permit issued by the department.

~~BB.~~ CC. An organization shall not alter bingo paper from its original form as invoiced from the supplier.

~~CC.~~ DD. The total amount of all discounts given by any organization during any fiscal year shall not exceed 1.0% of the organization's prior year gross receipts.

11VAC15-22-50. Rules of play.

A. Each organization shall adopt "house rules" regarding conduct of the game. Such rules shall be consistent with the provisions of the law and this chapter. "House rules" shall be conspicuously posted or, at an organization's option, printed on the game program.

B. All players shall be physically present at the location where the balls for a bingo game are drawn to play the game or to claim a prize. Seal card prizes that can only be determined after a seal is removed or opened must be claimed within 30 days of the close of a deal. All other prizes must be claimed on the game date.

C. The following rules of play shall govern the sale of instant bingo, pull-tabs, and seal cards:

1. No cards that have been marked, defaced, altered, tampered with, or otherwise constructed in a manner that tends to deceive the public or affect the chances of winning or losing shall be placed into play.

2. Winning cards shall have the winning symbol or number defaced or punched immediately after redemption by the organization's authorized representative.

3. An organization may commingle unsold instant bingo cards and pull-tabs with no more than one additional deal. The practice of commingling deals shall be disclosed to the public via house rules or in a similar manner. Seal card deals shall not be commingled.

4. If a deal is not played to completion and unsold cards remain, the remaining cards shall be sold on the next date the same type of ticket is scheduled to be sold. If no future date is anticipated, the organization shall, after making diligent efforts to sell the entire deal, consider the deal closed or completed. The unsold cards shall be retained for three years following the close of the fiscal year and shall not be opened.

5. All seal card games purchased shall contain the sign-up sheet, seals, and the cards packaged together in each deal.

6. Progressive seal card prizes not claimed within 30 days shall be carried forward to the next progressive game in progress and paid to the next progressive game prize winner.

D. Volunteer game workers or paid callers and managers may not play bingo at any session they have worked after the session has started. Volunteer game workers and paid callers and managers may not purchase directly or through others

instant bingo, pull-tab, or seal card products from organizations they assist on the day they have volunteered or worked or from any deal they have helped sell, whichever is later.

E. Electronic bingo.

1. Electronic bingo devices may be used by bingo players in the following manner:

a. Players must input into the device each number called;

b. Players must notify the game operator or caller of a winning pattern of bingo by a means other than use of the electronic device;

c. Players are limited to playing a maximum of 54 card faces per device per game;

d. Electronic bingo devices shall not be reserved for players. Each player shall have an equal opportunity to use the available devices on a first-come, first-served basis;

e. Each electronic bingo device shall produce a player receipt with the organization name, date, time, location, sequential transaction or receipt number, number of electronic bingo cards loaded, cost of electronic bingo cards loaded, date and time of the transaction, and device identification number. Images of cards or faces stored in an electronic device must be exact duplicates of the printed faces if faces are printed;

f. Department agents may examine and inspect any electronic bingo device and related system. Such examination and inspection shall include immediate access to the device and unlimited inspection of all parts and associated systems and may involve the removal of equipment from the game premises for further testing;

g. All electronic bingo devices must be loaded or enabled for play on the premises where the game will be played;

h. All electronic bingo devices shall be rented or otherwise provided to a player only by an organization and no part of the proceeds of the rental of such devices shall be paid to a landlord, his employee, agent, or member of his immediate family; and

i. If a player's call of a bingo is disputed by another player or if a department agent makes a request, one or more cards stored on an electronic bingo device shall be printed by the organization.

2. Players may exchange a defective electronic bingo device for another device provided a disinterested player verifies that the device is not functioning. A disinterested player shall also verify that no numbers called for the game in progress have been keyed into the replacement device prior to the exchange.

F. The following rules of play shall govern the conduct of raffles:

1. Before a prize drawing, each stub or other detachable section of each ticket sold shall be placed into a receptacle from which the winning tickets shall be drawn. The receptacle shall be designed so that each ticket placed in it has an equal chance to be drawn.

2. All prizes shall be valued at fair market value.

G. The following rules shall apply to "decision bingo" games:

1. Decision bingo shall be played on bingo cards in the conventional manner.

2. Players shall enter a game by paying a predetermined amount for each card face in play.

3. After the calling of each set of three numbers, players wishing to continue playing shall pay an additional predetermined fee for each card in play.

4. The prize amount shall be the total of all fees not to exceed $100. Any excess funds shall be retained by the organization.

5. The predetermined amounts in subdivisions 2 and 3 of this subsection shall be printed in the game program. The prize amount for a game shall be announced before the prize is paid to the winner.

H. The following rules shall apply to "treasure chest" games:

1. The organization shall list the treasure chest game on the bingo game program as a "Treasure Chest Raffle."

2. The organization shall have house rules posted that describe how the game is to be played.

3. The treasure chest participant shall only be selected through some other authorized charitable game at the same bingo session.

4. The organization shall account for all funds as treasure chest/raffle sales on the session reconciliation form.

5. If the player does not open the lock on the treasure chest, the game manager or his designee shall proceed to try every key until the correct key opens the treasure chest lock to show all players that one of the keys will open the lock.

I. The following rules shall apply to "Lucky Seven" games:

1. General rules.

a. A "Lucky Seven" bingo card shall have a single face where seven numbers shall be chosen.

b. A "Lucky Seven" sheet shall have multiple faces where seven numbers shall be chosen per face.

c. A player shall select seven numbers between the numbers of 1 and 75.

d. No duplicate numbers shall be played on a purchased face.

e. If a duplicate number appears on a face, then the card shall be void.

f. "Lucky Seven" shall be played on a bingo card or sheet, or electronic facsimile thereof.

g. "Lucky Seven" bingo paper (i.e., card(s) and sheet(s)) shall conform to the construction and randomization standards in the Charitable Gaming Supplier Regulations (11VAC15-31).

h. "Lucky Seven" shall be sold separately from the bingo card(s) or sheet(s) issued for any other bingo game.

i. "Lucky Seven" shall not be a part of any pack of any kind such as a convenience pack, super pack, etc.

j. The financial accounting for "Lucky Seven" must include separate accounting for the "Lucky Seven" sales and prize payouts as well as informational entries for each session that records the following for the progressive jackpot: beginning balance, additions to the progressive jackpot, payouts, and ending balance that is to be carried over to the next session.

k. "Lucky Seven" shall be listed on the game program for the session it is played.

l. "Lucky Seven" game card(s) or sheet(s) pricing shall be listed on the game program.

m. The pricing of "Lucky Seven" bingo card(s) or sheet(s) shall be by the number of faces.

n. The price for a "Lucky Seven" bingo card or sheet face shall be the same regardless of the number of faces purchased by a player.

o. No discounts shall be allowed.

p. "Lucky Seven" paper shall not be given away as a door prize.

q. There shall be no more than one "Lucky Seven" game per organization per calendar day.

r. No volunteer may play "Lucky Seven" at any session where he has worked.

s. The pricing for "Lucky Seven" faces shall remain constant from when the progressive jackpot is first started until the same jackpot has been won.

2. Progressive jackpot rules.

a. "Lucky Seven" shall begin with the calling of 16 random numbers by the game caller. These numbers will determine the winner of the "Lucky Seven" progressive jackpot. If the progressive jackpot has not been won during the session, then the maximum number of numbers called for the following session shall be increased by one number. This shall continue until the progressive jackpot has been won.

b. The amount of the progressive jackpot shall be announced prior to the game being played at the session. Multiple winners shall evenly split the progressive jackpot.

c. The initial progressive jackpot for the "Lucky Seven" game shall not exceed $500.

d. The organization shall take into consideration the number of players at its sessions when deciding the starting amount for its progressive jackpot.

e. Any increase in the amount for the "Lucky Seven's" progressive jackpot game shall be 50% of the moneys received from the sales of "Lucky Seven" bingo card(s) or sheet(s) during the previous session for which the sales occurred or $100 per session, whichever amount is less.

f. Once the progressive jackpot has reached $5,000, the organization shall not add any additional money generated from the sales of its "Lucky Seven" bingo card(s) or sheet(s) from a session to the jackpot.

g. The amount of numbers needed to win the "Lucky Seven" progressive jackpot and the amount of the jackpot shall be posted in a conspicuous place inside the bingo hall.

h. Once the progressive jackpot has been won, the next progressive jackpot shall not start in excess of $500.

3. Regular or special prize rules.

a. If the progressive jackpot has not been won during the session, then the game caller shall continue to call numbers at random until there is a verified bingo winner of the regular or special prize amount.

b. The regular or special prize amount shall be announced prior to the game being played. Multiple winners shall evenly split the regular or special prize.

c. The regular or special prize amount shall be 50% of the moneys received from the sales of "Lucky Seven" bingo card(s) or sheet(s) during the current session or $100, whichever amount is less.

d. The regular or special prize amount shall not be awarded when the progressive jackpot is won by a player.

J. The following rules shall apply to "WINGO":

1. "WINGO" shall be played only for the hearing impaired players.

2. "WINGO" shall utilize a visual device such as an oversized deck of cards in place of balls selected from a blower.

3. A caller must be in an area visible to all players and shall randomly select cards or other visual devices one at a time and display them so that all players can see them.

4. The organization must have house rules for "WINGO" and the rules shall identify how players indicate that they have won.

5. All financial reporting shall be consistent with reporting for a traditional bingo game.

11VAC15-22-80. Financial reporting, penalties, inspections and audits.

A. Each charitable gaming permit holder shall file an annual report of receipts and disbursements by March 15 of each year on a form prescribed by the department. The annual report shall cover the activity for the fiscal year.

B. The annual report shall be accompanied by the audit and administration fee as established by the department for the fiscal year unless the fee has been remitted with quarterly reports. Volunteer fire departments or rescue squads or auxiliary units thereof that have been recognized in accordance with § 15.2-955 of the Code of Virginia shall be exempt from the payment of audit and administration fees.

C. Except for volunteer fire departments or rescue squads or auxiliary units thereof that have been recognized in accordance with § 15.2-955 of the Code of Virginia, an organization desiring an extension to file annual reports for good cause shall pay the projected audit and administration fee by March 15 and request the extension in writing on a form prescribed by the department.

D. Unless exempted by § 18.2-340.23 of the Code of Virginia, qualified organizations realizing any gross gaming receipts in any calendar quarter shall file a quarterly report of receipts and disbursements on a form prescribed by the department as follows:

Quarter Ending	Date Due
March 31	June 1
June 30	September 1
September 30	December 1
December 31	March 1

Quarterly reports shall be accompanied by the appropriate audit and administration fee. Volunteer fire departments or rescue squads or auxiliary units thereof that have been recognized in accordance with § 15.2-955 of the Code of Virginia shall be exempt from the payment of audit and administration fees. ~~An annual financial report may substitute for a quarterly report if the organization has no further charitable gaming income during the remainder of the reporting period and the annual report is filed by the due date for the applicable calendar quarter.~~

E. Organizations failing to file required reports, request an extension or make fee payments when due shall be charged a penalty of $25 per day ~~from the due date until such time as the required report is filed~~ up to a maximum of 30 days and $750. The failure to file such reports within 30 days of the time such reports are due shall cause the automatic revocation of the permit, and no organization shall conduct any bingo game or raffle thereafter until the report is filed and a new permit is obtained.

F. Any qualified organization in possession of funds derived from charitable gaming (including those who have ceased operations), regardless of when such funds may have been received or whether it has a valid permit from the department, shall file an annual financial report on a form prescribed by the department on or before March 15 of each year until such funds are depleted. If an organization ceases the conduct of charitable gaming, it shall provide the department with the name of an individual who shall be responsible for filing financial reports. If no such information is provided, the president of an organization shall be responsible for filing reports until all charitable gaming proceeds are depleted.

G. If an organization has been identified through inspection, audit or other means as having deficiencies in complying with statutory or regulatory requirements or having ineffective internal controls, the department may impose restrictions or additional recordkeeping and financial reporting requirements.

H. Any records deemed necessary to complete an inspection, audit or investigation may be removed by the department, its employees or agents from the premises of an organization or any location where charitable gaming is conducted. The department shall provide a written receipt of such records at the time of removal.

VA.R. Doc. No. R08-960; Filed June 12, 2009, 11:17 a.m.

Proposed Regulation

Title of Regulation: **11VAC15-31. Supplier Regulations (amending 11VAC15-31-10).**

Statutory Authority: §§ 2.2-2456, 18.2-340.15, 18.2-340.19, and 18.2-340.34 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

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

Agency Contact: Betty Bowman, Director, Division of Charitable Gaming, 101 N. 14th St., 17th Floor, James Monroe Building, Richmond, VA 23219, telephone (804) 786-3015, FAX (804) 786-1079, or email betty.bowman@dcg.virginia.gov.

Basis: Section 18.2-340.15 of the Code of Virginia gives the Charitable Gaming Board the authority to promulgate

regulations under which gaming shall be conducted. Section 18.2-340.19 of the Code of Virginia describes the regulations the board can promulgate. Section 2.2-2456 of the Code of Virginia describes the duties of the board, including the authority to promulgate regulations. Section 18.2-340.34 of the Code of Virginia gives the board the authority to prescribe by regulation reasonable criteria consistent with the provisions of this article for the registration of suppliers and manufacturers of electronic games of chance systems for charitable gaming.

Purpose: These changes do not have any adverse impact on the health, safety or welfare to the citizens of Virginia. The impact is directly to charitable organizations that have been designated by the Internal Revenue Service as 501(c) not-for-profit entities that manage and report their gaming operations to the division. The changes for 2007 are directly related to financial reporting and how they report game operations.

Substance: The amendments add the definition of "last sale game" to provide clarity as to when these types of sales can occur. The definition of "pack" was amended to clarify the meaning for bingo jackpot.

Issues: Changes were due to legislative mandates from the 2007 Acts of Assembly. The existing regulations are not reflective of these actions and no other alternatives were considered. It is anticipated that the proposed regulatory action will pose no disadvantages to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. Chapter 196 of the 2007 Acts of Assembly states that instant bingo, pull tabs or seal cards may be sold only upon the premises owned or exclusively leased by the organization and at such times as the portion of the premises in which the instant bingo, pull tabs or seal cards are sold is open only to members and their guests. Nothing in this article shall be construed to prohibit the conduct of games of chance involving the sale of pull tabs or seal cards, commonly known as last sale games, conducted in accordance with this section.

The Charitable Gaming Board (Board) proposes to add a definition of "last sale game" to these regulations for clarification.

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

Estimated Economic Impact. According to the Department of Charitable Gaming there has been some uncertainty over the precise meaning of "last sale game." In order to add clarity for the public the Board proposes to add the North American Gaming Regulators Association definition of "last sale game" to these regulations. Greater clarity will provide a net benefit for the public.

Businesses and Entities Affected. The proposed amendment potentially affects the 560 charitable organizations in the Commonwealth.[1]

Localities Particularly Affected. The proposed amendment does not disproportionately affect particular localities.

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

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

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

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

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

[1] Datum source: Department of Charitable Gaming

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

Summary:

The amendments add the definition of "last sale game" and modify the definition of "pack."

11VAC15-31-10. Definitions.

In addition to the definitions contained in § 18.2-340.16 of the Code of Virginia, the words and terms below when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Agent" means any person authorized by a supplier to act for or in place of such supplier.

"Board" means the Virginia Charitable Gaming Board.

"Cash" means United States currency or coinage.

"Concealed face bingo card" means a nonreusable bingo card constructed to conceal the card face. This type of card is commonly referred to under trade names such as "Tear-open" or "Bonanza Bingo."

"Conduct" means the actions associated with the provisions of a gaming operation during and immediately before or after the permitted activity, which may include, but is not limited to (i) selling bingo cards or packs, electronic devices, instant bingo or pull-tab cards, or raffle tickets; (ii) calling bingo games; (iii) distributing prizes; and (iv) any other services provided by volunteer workers.

"DCG number" means a unique identification number issued by the department.

"Deal" means each separate package or series of packages consisting of one game of instant bingo, pull-tabs, or seal cards with the same serial number.

"Department" means the Virginia Department of Charitable Gaming.

"Designator" means an object used in the number selection process, such as a ping-pong ball, upon which bingo letters and numbers are imprinted.

"Director" means the Director of the Virginia Department of Charitable Gaming.

"Disposable paper card" means a nonreusable paper bingo card manufactured with preprinted numbers.

"Electronic bingo device" means an electronic device that uses proprietary software or hardware, or is used in conjunction with commonly available software and computers, to display facsimiles of bingo cards and allows a player to daub such cards.

"Equipment and video systems" includes equipment ~~which~~ that facilitates the conduct of charitable gaming such as ball blowers, flashboards, electronic verifiers and replacement parts for such equipment.

"Fiscal year" or "annual reporting period" means the 12-month period beginning January 1 and ending December 31 of any given year.

"Flare" means a piece of paper, cardboard or similar material ~~which~~ that bears printed information relating to the name of the manufacturer or logo, name of the game, card count, cost per play, serial number, the number of prizes to be awarded, and the specific prize amounts in a deal of instant bingo, pull-tabs, or seal cards.

"Immediate family" means one's spouse, parent, child, sibling, grandchild, grandparent, ~~mother- or~~ mother-in-law, father-in-law, or stepchild.

"Interested persons" means the owner, director, officer, or partner of an entity engaged in supplying charitable gaming supplies to organizations.

"Last sale game" means those pull-tab games where an automatic instant prize or a chance at a seal prize is offered for the purchaser of the last remaining ticket in the deal, § 18.2-340.26:1 of the Code of Virginia restricts the sale of these games to social quarters only, and the invoice must clearly state "Last Sale Games for Social Quarters Only."

"Management" means the provision of oversight of a gaming operation, which may include, but is not limited to, the responsibilities of applying for and maintaining a permit or authorization; compiling, submitting and maintaining required records and financial reports; and ensuring that all aspects of the operation are in compliance with all applicable statutes and regulations.

"Manufacturer" means a person or entity that assembles from raw materials or subparts a completed piece of bingo or other charitable gaming equipment or supplies. "Manufacturer" also means a person or entity that modifies, converts, adds or removes parts to or from bingo or other charitable gaming equipment or supplies to further their promotion or sale for the conduct of charitable gaming.

"Operation" means the activities associated with production of a charitable gaming activity, which may include, but is not limited to (i) the direct on-site supervision of the conduct of charitable gaming, (ii) coordination of volunteers, and (iii) all responsibilities of charitable gaming designated by the organization's management.

"Owner" means any individual with financial interest of 10% or more in a supplier.

"Pack" means sheets of bingo paper or electronic facsimiles assembled in the order of games to be played. This may include specials ~~and jackpots,~~ but shall not include any bingo jackpots, winner-take-all, Lucky Seven, or raffle.

"Prize" means cash, merchandise, certificate, or other item of value awarded to a winning player.

"Progressive seal card" means a seal card game in which a prize is carried forward to the next deal if not won when a deal is completed.

"Remuneration" means payment in cash or the provision of anything of value for goods provided or services rendered.

"Seal card" means a board or placard used in conjunction with a deal of the same serial number ~~which~~ that contains one or more concealed areas that, when removed or opened, reveal a predesignated winning number, letter, or symbol located on that board or placard.

"Selection device" means a manually or mechanically operated device to randomly select bingo numbers.

"Serial number" means a unique number printed by the manufacturer on each bingo card in a set, each instant bingo, pull-tabs or seal card in a deal, each electronic bingo device or each door prize ticket.

"Series number" means the number of unique card faces contained in a set of disposable bingo paper cards or bingo hard cards. A 9000 series, for example, has 9000 unique faces.

"Session" means a period of time during which one or more bingo games are conducted that begins with the selection of the first ball for the first game and ends with the selection of the last ball for the last game.

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TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health is claiming an exemption from the Administrative Process Act pursuant to Item 295 E of Chapter 781 of the 2009 Acts of Assembly, which exempts the Special Supplemental Nutrition Program for Women, Infants, and Children from the requirements of the Administrative Process Act.

Title of Regulation: **12VAC5-195. Virginia WIC Program (amending 12VAC5-195-20, 12VAC5-195-30, 12VAC5-195-70, 12VAC5-195-140, 12VAC5-195-180, 12VAC5-195-190, 12VAC5-195-280 through 12VAC5-195-340, 12VAC5-195-360, 12VAC5-195-370, 12VAC5-195-390, 12VAC5-195-400, 12VAC5-195-410, 12VAC5-195-420, 12VAC5-195-450, 12VAC5-195-460, 12VAC5-195-480 through 12VAC5-195-550, 12VAC5-195-580, 12VAC5-195-590, 12VAC5-195-600, 12VAC5-195-610, 12VAC5-195-630, 12VAC5-195-640, 12VAC5-195-660, 12VAC5-195-670; repealing 12VAC5-195-380).**

Statutory Authority: § 32.1-12 of the Code of Virginia; 7 CFR Part 246.

Effective Date: July 6, 2009.

Agency Contact: Anne Massey, Policy Analyst, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7800 ext. 7797, or email anne.massey@vdh.virginia.gov.

Summary:

The majority of the amendments made to the Virginia WIC Program are made to Part III of the regulations, which focuses on vendor requirements. The amendments are the result of significant edits to the Vendor Manual for the Virginia WIC Program. The amendments expand the current regulations and provide added detail to enrollment procedures, general requirements and conditions for retail authorization and policies regarding conflict of interest, solicitation, high-risk designation, and sanctions and administrative actions.

Substantive changes regarding vendor requirements include the following:

1. The ranking criteria for selecting retailers and applicants competing for available slots is amended in situations when multiple stores have equal rankings and there are not enough slots to authorize all stores. Two additional criteria for breaking ties when equal ranking exists include: (i) having the corporate representative decide on which store receives the slot if both stores in a tie are owned by the same corporate entity; and (ii) offering the slot to the store with the highest food stamp sales for the previous six months if both stores are not owned by the same corporate entity. The existing criterion to give preference to retailers certified by the Department of Minority Business Enterprise is eliminated.

2. Previously authorized stores may be given a one-year extension of their authorization if they compete with a newly opened, better qualified store for a slot.

3. The low volume performance standard, which requires authorized retail stores to serve at least an average of 60 unique WIC participants a month, has been eliminated.

4. Additional detail has been added regarding specific, mandatory requirements that stores must meet in order to be reimbursed, including entry of mandatory and optional food and formula prices and submission of a direct deposit form to the state agency.

5. The informal settlement meetings provision is significantly changed to reflect a shift in the purpose of informal settlement meetings. Instead of the informal settlement meetings being part of the appeals process, the state agency will use these meetings as a precursor to administrative action to be held before action is taken.

Substantive changes regarding participant requirements include (i) clarifying that WIC food instruments will be mailed for a one-month period unless otherwise approved by the state agency; (ii) expanding the justification for mailing of WIC food instruments to include "difficulty obtaining a complete prescription for special formula as approved by a local WIC coordinator"; and (iii) conforming to federal regulations by changing the timeframe for requesting a fair hearing to within 15 days of the written notification date of program denial, termination of benefits, or claim against an individual for improperly issued benefits.

12VAC5-195-20. Purpose.

A. The Virginia WIC Program serves women who are breastfeeding, pregnant, or have just given birth; infants less than one year old; and children less than five years old. WIC participants must be Virginia residents and meet the financial and nutritional requirements.

B. The Virginia WIC Program provides special supplemental foods to eligible participants through a retailer delivery system (7 CFR 246.12). Food benefits are issued by local agencies to eligible participants using food instruments (7 CFR 246.10). Participants redeem their food instruments at any authorized retailer or entity. The state agency enters into an agreement with authorized stores ~~(7 CFR 246.12(h))~~ (7 CFR 246.12). This agreement identifies the obligations, rights and responsibilities of both the authorized retail store and the state agency. Retailers deposit these food instruments into their bank account. The state agency pays authorized retailers a reasonable dollar amount for the foods purchased, as listed on the deposited food instruments ~~(7 CFR 246.12(h)(2)(3))~~ (7 CFR 246.12).

C. The state agency shall promulgate policies, guidelines, manuals and training resources to facilitate operations of the Virginia WIC Program in accordance with its contractual agreement with Food Nutrition Service (FNS) (7 CFR 246.3); the guidelines and instructions issued by FNS in policy letters; and management evaluations and audits and the WIC Program State Plan of Operations.

12VAC5-195-30. Definitions.

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

"Administrative appeal" means the procedure through which applicants and/or retail stores may appeal a state agency's administrative action, including program disqualification, denied authorization and other termination reasons.

"Annualized income" means income amount covering a 12-month period used to determine financial eligibility for the WIC Program.

"Applicant" or "retail store applicant" means a sole proprietorship, a partnership, cooperative association or a corporation that is not currently authorized to accept WIC food instruments.

"Approved food list" means a brochure or method used by the WIC Program to communicate to eligible participants, retailers, local agencies and other interested parties which authorized supplemental foods may be purchased using WIC food instruments. The approved food list is a guide and must be used with the printed food instrument, which may identify specific brands or additional products not stated on the approved food list that may be purchased by participants.

"Authorization" means the process by which the state agency assesses, selects and enters into an agreement with stores that apply or subsequently reapply to be authorized.

"Automated clearinghouse" or "ACH credit" or "direct deposit" means a method used to reimburse stores for certain types of processed food instruments (i.e., "Over FI Max."). A credit is made to the store's designated bank account and routing number using the automated clearinghouse process.

"Business economic areas" or "BEAs" mean a categorization method established by the United States Department of Commerce – Bureau of Economic Analysis and used by the state agency to identify geographically similar trade and economic communities. Some more populated BEAs are further broken down into smaller subsets or peer groupings, based upon number of unique participants served by authorized stores.

"Caretaker" means a person designated by a parent or legal guardian to certify an infant/child, obtain and redeem food instruments and attend nutrition education. A caretaker may be any person who has detailed knowledge of the nutritional needs and eating habits of the infant/child. A parent or legal guardian may designate one caretaker per family ID ~~nmber~~ number.

"Caseload" means the number of WIC participants assigned to a local agency by the state agency.

"Cash value food benefits" means a special food instrument that has been issued to eligible participants for a specific dollar amount that must be used to purchase fruits and vegetables. Unless stated otherwise, all references to food instruments include cash value food benefits, as well as food and formula food instruments.

"Enrollment" means the process all applicants and authorized stores must complete in order for a store to be eligible to accept WIC food instruments.

"Food instrument type" or "FI type" means a grouping of certain foods and formula together that is used for reimbursement purposes in a paper-based system.

"Image replacement document" or "IRD" means a legal copy of a deposited food instrument that is created and transmitted by a store's depository bank to the WIC Program's backend processor for payment consideration.

"Informal settlement meeting" means a meeting held with an authorized store or applicant representative and the state WIC director whose purpose is to review and clarify outstanding WIC Program administrative issues.

"Leave and earnings statement" or "LES" means the earnings statement for a member of the uniformed service.

"Legal guardian" means an individual who has been appointed by a court of law or the Department of Social Services, or other legal means, to have primary, physical custody of a minor. A legal guardian shall be authorized to provide eligibility information for an applicant, consent to medical treatment of the applicant, and shall be held legally bound if sanctions are imposed.

~~"Low volume retailer" means authorized stores that service on average a fewer number of participants than the performance standard, as established by the state agency.~~

"Peer group" means a classification of applicants and authorized stores into groups based on common characteristics or criteria that affect food prices for the purpose of applying appropriate competitive price criteria to stores at authorization and limiting payments for foods at competitive pricing levels.

"Postpayment review" means an analysis of paid food instruments redeemed by authorized retailers in order to determine if pricing and redemption discrepancies exist. Based upon this analysis, a vendor claim against the retail store may be established by the state agency.

"Prepayment edit" means a price adjustment made to the reimbursement level given to retailers. This editing process can be either automated or a manual screening of deposited food instruments done by an independent banking contractor, prior to releasing payment to authorized retail stores.

"Retailer" means a vendor, retail store, commissary, or entity authorized by the Virginia WIC Program to accept WIC food instruments for the various types of foods listed on food instruments.

"Retailer agreement" means a written agreement that establishes the respective roles and responsibilities of the program and authorized retailers in complying with federal and state requirements.

"Sanctions" mean a penalty imposed by the state agency upon an authorized retailer for a specific violation outlined in the vendor manual or retailer agreement.

"State agency" means the Division of WIC and Community Nutrition Services that has the administrative responsibility for managing the Virginia WIC Program.

"Termination" means the act of ending a retail store's WIC Program authorization for administrative reasons that include but are not limited to a change of ownership, closed store, voluntary withdrawal, and noncompetitive prices.

"Unique participant" means the number of unduplicated individuals who have redeemed one or more food instruments at a retail store during a specific period.

"United States Department of Agriculture" or "USDA" means the federal agency that provides funding for the WIC Program on behalf of Congress.

"Vendor claim" means the state agency has determined an authorized store committed a violation of the retailer agreement that affects the payment status of one or several food instruments. The state agency may delay payment or establish a claim in the amount of the full purchase price of each food instrument that contained the overcharge or other error. The state agency will bill and recoup the funds paid against these improperly redeemed food instruments.

"Vendor manual" means a series of written documents that communicate administrative policies and procedures for the Virginia WIC Program that affect both authorized retailers and applicants. The Vendor Manual is part of the WIC Program State Plan that must be submitted and approved by USDA.

"Virginia Department of Health" or "VDH" means the state agency that oversees the Virginia WIC Program.

"Waiting list" means a list implemented by the state agency when the maximum caseload is reached.

"Warning" means one or more incidents of noncompliance with program requirements were documented. The state agency sends a written warning letter to the owner or store manager to advise him of any documented violations. A warning letter is not sent to the owner or store manager for selective documented violations that affect the integrity of the investigative process, including but not limited to overcharges, fraud, and forgery.

Part II
Participant Requirements

12VAC5-195-70. Eligibility requirements.

A. Adjunctive financial eligibility requirements. Adjunctive, or automatic income eligibility is determined pursuant to ~~7 CFR 246.7(d)(2)(vi)(A)~~ 7 CFR 246.7. Documentation is required as proof of participation in programs that qualify an applicant for adjunctive financial eligibility. The state agency also allows the following state-administered programs to be used in determining adjunctive income eligibility:

1. Family Access to Medical Insurance Security Plan (FAMIS) and a $2.00 co-pay level; and

2. FAMIS MOMS program.

B. Local agencies shall serve institutionalized applicants if they meet all eligibility requirements.

C. For determining income eligibility, local agency personnel shall use the applicant's current or annualized income, whichever is the best indication of circumstances.

D. In determining income eligibility, the state agency utilizes all income exclusions listed in 7 CFR 246.7.

E. Applicants who are not adjunctively financially eligible shall have financial eligibility determined using income guidelines equaling the income guidelines established under § 9 of the National School Lunch Act for reduced price school meals per ~~7 CFR 246.7(d)(1)~~ 7 CFR 246.7.

F. An applicant claiming multiple fetuses shall have the stated number used at the time of certification, but is required to provide written verification by a physician or nurse practitioner working under the supervision of a physician within 90 days of certification.

12VAC5-195-140. Food instruments.

A. Food instrument issuance**.** All food instruments shall be issued through the automated system after eligibility has been documented and only when the participant, parent or legal guardian, caretaker, or proxy is physically present at the local agency to pick up their food instrument. Failure by the participant, parent, legal guardian, caretaker, or proxy to attend the initial nutrition education appointment may result in reduced WIC benefits for that month.

B. Lost food instruments. Replacement of lost, valid, not redeemed food instruments shall only occur once within the entire duration of the participant, parent, caretaker, or legal guardian's receipt of WIC services, unless approval is obtained from the state agency. Lost food instruments shall only be replaced for one of the following situations:

1. A participant leaving home because of family violence;

2. A change in full legal custody, including when infants/children are removed from home and placed in foster care or parental custody is changed; or

3. An event out of the control of participant, such as a fire or natural disaster that is publicly documented.

C. Stolen food instruments. Food instruments reported as stolen shall only be replaced when a police report is provided that states that the valid, not redeemed, WIC food instruments were the stolen items. Stolen food instruments shall not be replaced without a police report, unless costs are associated with the police report and a waiver is granted by the state agency. Stolen food instruments shall only be replaced once within the entire duration of the participant, parent, caretaker, or legal guardian's receipt of WIC services, unless approval is obtained from the state agency.

D. Mailing WIC food instruments. Food instruments shall only be mailed with prior approval from the competent professional authority for individual participants if the participant has already received the required secondary nutrition education contact or if the participant will be able to receive nutrition education at the next visit within the certification period. Justification for mailing food instruments to individuals, families and groups includes:

1. Illness or disability as documented by medical records and meeting the Americans with Disabilities Act criteria (28 CFR Part 35) for physically unable to be present;

2. Imminent childbirth as documented by medical records;

3. Distance to travel, especially in rural areas with a minimum 60-mile roundtrip travel distance between home and the local WIC clinic, as approved by local WIC coordinator;

4. Other travel distance for participants with unique transportation challenges;

5. Computer failure at the local agency site;

6. Natural disasters; ~~and~~

7. Complete systemwide failure of automated system~~.~~; and

8. Difficulty obtaining complete prescription for special formula as approved by a local WIC coordinator.

Food instruments shall only be mailed for a one-month period. Requests beyond the one-month period shall require approval by the state agency.

12VAC5-195-180. Fair hearing.

A. The Virginia WIC Program is a federally administered program. The following fair hearing procedures are a federal process with which the state agency must comply. Pursuant to ~~7 CFR 246.9(a)~~ 7 CFR 246.9, the state agency shall provide a hearing procedure through which any individual may appeal a state or local agency action that results in a claim against the individual for repayment of the cash value of improperly issued benefits or results in the individual's denial of participation or disqualification from the program.

B. The local agency shall inform each individual in writing of the right to a fair hearing at the time of a claim against an individual for improperly issued benefits or at the time of participation denial or of disqualification from the program.

C. A fair hearing shall be requested within 60 days of the written notification date of program denial, termination of benefits or claim against an individual for improperly issued benefits. The request shall be made in any clear expression to present the case to a higher authority.

D. Participants who appeal the termination of benefits within ~~60~~ 15 days must continue to receive WIC benefits until the hearing officer reaches a decision, the participant becomes

categorically ineligible, or the certification period expires, whichever comes first.

E. Applicants who are denied WIC benefits at the initial certification or because of the expiration of their certification may appeal the denial but shall not receive benefits while awaiting the hearing decision.

F. The local agency shall:

1. Accept a fair hearing request verbally or in writing;

2. Contact the applicant or participant to schedule a preliminary conference within 10 calendar days of the fair hearing request; and

3. Inform the applicant or participant that a fair hearing will be conducted if the issue is not resolved at a preliminary conference.

If the issue is resolved at the conference, the applicant or participant shall sign a statement indicating that a formal fair hearing is no longer requested. If the issue is not resolved at the conference, the local agency shall contact the state agency to schedule a fair hearing.

G. A fair hearing will be held within 21 days of the request, unless delayed pursuant to subsection I or J, or by mutual agreement of the parties.

H. The state agency shall provide 10 days advanced written notice of the date, time and place of the hearing, which shall be held in the local agency at which the participant or applicant receives WIC Program services.

I. The participant or applicant must appear at the fair hearing in person, but may be accompanied by a representative such as a relative, friend, legal counsel, or other spokesperson. The applicant or participant must indicate whether or not they will be represented by an attorney when the fair hearing request is made. The applicant or participant must also provide the state agency with copies of any written information to be used during the hearing and names of witnesses that will be called at least five days prior to the scheduled fair hearing. Failure to notify the state agency of these items may result in a rescheduled date and time for the fair hearing or the exclusion of documents and witnesses from the fair hearing.

J. The participant or applicant will have one opportunity to reschedule the fair hearing's date or time. All requests to reschedule the meeting date or time must be submitted in writing at least 24 hours before the scheduled meeting date unless an emergency occurs, as determined at the discretion of the state WIC director or designee.

K. If the participant or applicant is more than 45 minutes late from the agreed upon hearing start time, then this will be considered a "no show" unless they can provide documentation the state WIC director determines justifies the participant's or applicant's tardiness or failure to appear. This outcome means that the participant or applicant has forfeited his rights to a fair hearing.

L. Pursuant to ~~7 CFR 246.9(j)~~ 7 CFR 246.9, the state or local agency shall provide the participant, applicant, or representative an opportunity to:

1. Examine, prior to and during the hearing, the documents and records presented to support the decision under appeal, which will be sent to the applicant or participant 10 days prior to the fair hearing;

2. Be assisted or represented by an attorney or other persons;

3. Bring witnesses;

4. Advance arguments without undue interference;

5. Question or refute any testimony or evidence, including an opportunity to confront and cross examine adverse witnesses; and

6. Submit evidence to establish all pertinent facts and circumstances in the case.

M. The hearing officer shall hear evidence and testimony and reach a decision. The ~~hearing officer shall notify the applicant or participant, the state WIC director, and the district health director of the decision in writing~~ state WIC director shall provide written notification of the hearing officer's decision to the applicant or participant and the district health director within 45 days of the date of the fair hearing request.

1. Applicants denied benefits may be enrolled upon receipt of a favorable decision.

2. Participants whose benefits were previously denied or discontinued may receive or reapply for WIC benefits upon receipt of a favorable decision by the hearing officer.

N. The local agency and state agency shall keep the results of the hearing on file for five years.

12VAC5-195-190. Fair hearing request denial or dismissal.

Per ~~7 CFR 246.9(f)~~ 7 CFR 246.9, the state and local agencies shall not deny or dismiss a request for a hearing unless:

1. The request is not received within the time limit set by the state agency;

2. The request is withdrawn in writing by the appellant or a representative of the appellant;

3. The appellant or representative fails, without good cause, to appear at the scheduled hearing; or

4. The appellant has been denied participation by a previous hearing and cannot provide evidence that

circumstances relevant to program eligibility have changed in such a way as to justify a hearing.

Part III
Vendor Requirements

12VAC5-195-280. Enrollment procedures.

A. The state agency accepts applications from new store applicants year round.

B. Stores seeking authorization shall sell a range and variety of staple foods and WIC-approved formulas at a permanent fixed location, as specified in the retailer agreement and application package. Only one authorization approval will be granted by the state agency to each eligible location selected for program authorization. Stand-alone pharmacies and any other types of entities that cannot meet all of the general requirements outlined in this section will be denied WIC Program authorization.

C. Store applicants shall complete the following requirements to become authorized for WIC Program participation:

1. Submit all applications, including pricing updates, using an electronic, Internet-based method that has been approved by the WIC Program;

2. Submit prices for all mandatory food and formula items, a signed retailer agreement, supplemental informational form, direct deposit ACH form, and other required forms as deemed necessary to evaluate a retailer's or applicant's qualifications;

3. Pass a competitiveness price assessment completed by the WIC Program. The state agency shall determine that the prices submitted as part of the new store application process are price competitive when compared to other stores located in the store's assigned peer group;

4. Provide documentation to the state agency, upon request, that a satisfactory business integrity record exists. None of the store's current owners, officers, or managers shall have been convicted of or had a civil judgment entered against them for conduct demonstrating a lack of business integrity, within the past six years;

5. Pass an unannounced onsite visit to determine if the store has the minimum stocking requirement, has available for sale the variety and selection of foods as stated on the supplemental informational form, and has posted prices that are not higher than prices submitted as part of the application process. The visit shall also verify that the store's hours of operation were accurately reported;

6. Pass an onsite visit to determine if the type and variety of foods sold would qualify the store to earn more than 50% of its annual sales solely from the WIC Program. If the store is likely to be an above 50% vendor, then it shall be denied authorization;

7. Attend a mandatory new store training session conducted by either state agency staff or a certified corporate trainer within 30 calendar days after the retail store passes a stocking and price verification visit. Provide documentation to the state agency that this mandatory training has been completed. Store applicants shall provide to the state agency this documentation within 30 calendar days after meeting all other enrollment requirements;

8. Provide training to store personnel and cashiers on proper WIC food instrument handling procedures; ~~and~~

9. Return to the state agency all required paperwork within 14 days after receipt including, but not limited to, a signed retailer agreement, if applicable; supplemental informational form; direct deposit ACH form; and other information deemed necessary to evaluate a retailer's or applicant's qualifications; and

~~9.~~ 10. Receive from the state agency an authorization acknowledgement letter granting WIC Program authorization, a Vendor Manual for the Virginia WIC Program, a WIC window decal, and an authorization stamp.

D. Newly authorized stores shall begin accepting WIC food instruments within 15 calendar days after receiving their program authorization stamp and final acknowledgment letter. Authorized stores are required to contact the state agency in writing if the store will be unable to meet this program requirement. Failure to begin accepting WIC food instruments within the established time frame may lead to the state ~~agency's~~ agency withdrawing its authorization decision.

E. Store applicants that fail to meet any of the enrollment requirements outlined in this section will be denied authorization unless inadequate participant access would exist.

12VAC5-195-290. Communications.

A. Authorized stores shall contact the state agency or their assigned agency representative rather than local WIC agency staff for all questions related to WIC Program participation including, but not limited to, retail store selection and authorization requirements and decisions, reimbursement questions, participant's food instrument prescriptions, and complaints.

B. Authorized stores shall provide at least 15 calendar days written notice if the retailer desires to terminate its participation in the WIC Program or when the retailer ceases operation, changes ownership, or for any other circumstances that impacts service delivery including, but not limited to, relocations, renovations, permanent or temporary closures.

C. The state agency regularly communicates policy and procedural changes, training issues, WIC food instrument processing tips, cashier reminders and alerts affecting retail stores in an informational newsletter. Annually, a newsletter

is published and sent to all authorized retail stores to update store personnel on major program changes. The program posts, if applicable, approved policy changes on its external webpage. Authorized stores shall be held accountable for complying with all policy changes communicated in writing by the state agency.

D. Written correspondence retained in the state agency's centralized files located in Richmond, Virginia, pertaining to, but not limited to, a store's authorization status, application documentation, or WIC and food stamps compliance history is confidential and is protected under federal regulations ~~(7 CFR 246.26(e))~~ (7 CFR 246.26). The state agency shall maintain stores' compliance history and background information for at least a three-year period or the contract period, whichever is longer. For civil judgments and food stamp administrative documentation issued against a specific authorized retailer, the state agency will retain this documentation for six years.

E. In order to utilize the WIC-approved, Internet-based application for submission of prices, stores shall give consent to be monitored by the state agency to ensure this application is being used for its intended purpose. If such monitoring reveals possible evidence of unauthorized or criminal activity, this evidence may be provided to appropriate authorities for disciplinary action and prosecution.

12VAC5-195-300. General requirements and conditions for authorization.

A. Once enrolled, a store or applicant shall obtain authorization to operate as a WIC-authorized store from the state agency before accepting or redeeming food instruments.

B. To obtain authorization and remain authorized, retailers shall:

1. Be food stamp authorized at the time of application or reauthorization and remain in good standing;

2. Be currently WIC-authorized or eligible for authorization after meeting a WIC disqualification requirement, if applicable;

3. Be in operation as a business at the time of application or within 45 calendar days of application;

4. Meet all local, state and federal requirements, including sanitation and building code regulations;

5. Be necessary as determined by the state agency to ensure adequate participant access;

6. Submit prices to the WIC Program using an electronic, Internet-based method at least twice a year or as requested by the state agency;

7. Remain price competitive when compared to other authorized stores that are located in the same peer group;

~~8. Maintain a minimum number of unique participants served after one year of continuous program authorization;~~

~~9.~~ 8. Meet the mandatory minimum stocking requirement at all times and keep such stock in the customer shopping area or immediately available onsite;

~~10.~~ 9. Be located at the store address indicated in the state agency's application or authorization record; this address shall be the sole location at which WIC customers purchase supplemental foods and formulas;

~~11.~~ 10. Be open for business at least 50 hours per week;

~~12.~~ 11. Meet all business integrity criteria as defined in ~~Policy 14.1, effective August 1, 2003, of the Vendor Manual for the Virginia WIC Program~~ 7 CFR 246.12;

~~13.~~ 12. Provide supporting documentation to the state agency including, but not limited to, annual food sales information or tax records that will be used to ensure that not more than 50% of the store's total food sales were derived from WIC sales;

~~14.~~ 13. Comply with all financial and corrective actions identified from prior WIC authorization, if applicable;

~~15.~~ 14. Purchase contract and special formula from a distributor, supplier, wholesaler, or retail store whose name is listed by the Virginia WIC Program as approved to sell formula; and

~~16.~~ 15. Participate in the WIC Program's direct deposit (ACH) process used for reimbursement purposes.

C. Stores shall not offer drive-through window or home delivery services for making WIC purchases. The participant must take physical possession of purchased food and formula items at the time of transaction when the WIC food instrument is signed.

12VAC5-195-310. Above 50% vendor screening.

A. The state agency shall not authorize any applicant or retail store that is likely to derive 50% or more of its annual food sales from the sale of supplemental foods to WIC participants. Stores already authorized by the program whose annual WIC food sales rise to 50% or more of their total food sales will have their authorization status terminated. Stores must submit documentation that permits the state agency to complete its evaluation and identification of above 50% vendors. Failure to submit the requested documentation may lead to the store's authorization being terminated.

B. Newly authorized stores with six months of redemption history shall have their status reviewed to determine if they qualify as an above 50% vendor ~~(7 CFR 246.12(g)(4)(i)(B))~~ (7 CFR 246.12). If the state agency's assessment determines the store qualifies as an above 50% vendor, the store's WIC Program authorization status shall be terminated.

12VAC5-195-320. Retailer agreement.

A. The retailer agreement does not constitute a license or a property right. If an authorized store wishes to continue to be authorized beyond the current agreement period, the store must reapply for authorization. All stores must be selected under the current selection and authorization criteria being used by the state agency ~~(7 CFR 246.12(h)(xxi))~~ (7 CFR 246.12).

B. Authorized retail stores and military commissaries shall use a single uniform retailer agreement. The maximum duration of the retailer agreement shall not exceed three years. The duration of the retailer agreement may be for a period that is less than three years, depending upon when a county or location is selected to undergo the regional authorization and selection process.

C. A fully executed retailer agreement shall be signed by both an authorized store representative and state agency representative to be enforceable. The state agency shall provide the store or designated contact person a copy of its signed retailer agreement or authorization acknowledgement letter once all selection and authorization requirements have been met.

D. A signed retailer agreement must be on file for any store to be paid for a redeemed WIC food instrument.

E. Revisions, amendments or modifications to the provisions of the retailer agreement shall be made in writing. The retailer agreement shall be automatically amended upon notice from the state agency should federal, state laws, or regulations require amendments.

F. Authorized stores shall keep a copy of the updated Vendor Manual, including a copy of the Approved Food list and Cashier Training Guide, at the store location authorized to accept WIC food instruments.

G. The state agency reserves the right to extend the current retailer agreement up to six months during the reauthorization evaluation process. If the state agency uses this option, it shall provide written notice to authorized stores affected by this administrative decision.

H. If the state agency takes administrative action against a retailer and the retailer appeals, then the state agency shall grant an extension of that store's retailer agreement during the pendency of the appeal process if the retailer agreement would otherwise expire during that time. Once an appeal decision has been made, the state agency will proceed with either terminating the existing agreement or issuing a new agreement.

12VAC5-195-330. Adequate participant access.

A. The state agency shall ensure that adequate participant access exists so that eligible participants may redeem the food instruments issued to them. The state agency uses a retailer limiting criteria to determine adequate participant access ~~(7 CFR 246.12(g)(2))~~ (7 CFR 246.12). The state agency has the sole authority to define adequate participant access criteria.

B. The number of authorized stores or retailer slots available is based on two factors:

1. Number of WIC participants living in a specific city or county in which the retail store is physically located; and

2. Population density of the community where the store is physically located.

C. Population density is calculated by identifying the population that resides in a specific city or county. Population density serves as a proxy indicator used by the program to project how close together retailers and participants are located next to each other. Thus densely populated areas where stores are located closer together require fewer stores to provide adequate participant access.

D. In sparsely populated areas, both population and stores are dispersed over a wider geographical area that directly impacts participant access. More sparsely populated areas require more authorized stores to adequately serve eligible participants.

E. Participation is managed and monitored by the WIC Program on a monthly basis. For this reason the number of available slots for authorized stores may change frequently. This change will not impact stores already authorized, but may impact a new store applying for authorization in a given area.

F. The number of authorized retailers or retailer slots available is calculated by a store to participant ratio, which is higher for densely populated communities, and lower for sparsely populated counties. Population density data is updated annually by the state agency and is obtained from the United States Census Bureau. The WIC Program uses a single population density indicator to identify which communities have the higher retailer to participant ratio.

G. A specific number of retailer slots will be allocated to each city/county. A listing of retailer slots available and allocated to each city and county will not be published and distributed to authorized stores, since this figure may change frequently.

12VAC5-195-340. Competitive pricing.

A. Authorized stores and applicants shall submit pricing information to the state agency. Item pricing data is obtained from authorized stores and applicants from prices that have been entered into a WIC-approved Internet-based application.

B. The state agency collects pricing information for specific food items at least twice a year ~~(7 CFR 246.12(g)(4)(ii)(B))~~ (7 CFR 246.12). Prices may be collected more frequently from authorized stores including, but not limited to, the following reasons:

1. A store's prices are determined to be noncompetitive;

2. A store is designated a high risk retailer;

3. A competitive pricing analysis is needed in order to consider an applicant's qualifications;

4. An administrative review is being conducted as part of a compliance investigation, participant access analysis, inventory audit, or post payment analysis; or

5. Other operational considerations that may occur including, but not limited to, a change in contract formula company, a change in infant food company, food industry price fluctuations, manufacturer's price increases for ~~"rebateable"~~ selected WIC-approved products, such as baby foods, contract formula, and infant cereal.

C. Stores and applicants must submit the highest shelf price for all mandatory foods and formula brands, unless stated otherwise, that are available and eligible to be sold to participants. For milk items only, stores must submit the price for their store brand or least expensive brand available. Prices for optional foods approved for purchase submitted via the Internet-based application shall be used for calculating reimbursement maximums. Retailers must use the approved food list and the minimum stocking requirement to identify all eligible brands and foods.

D. Stores failing to submit their prices within 14 days of the stated due date in the Vendor Manual will receive one warning letter. After receiving this letter, stores that fail to respond within the time period stated in the letter may have their WIC Program authorization terminated unless inadequate participant access would exist.

~~C.~~ E. Applicants whose prices are determined to be noncompetitive when compared with other authorized stores assigned to the same peer group shall be denied WIC Program authorization. These applicants shall not be given a second opportunity to resubmit their prices, unless the state agency determines that inadequate participant access would exist.

F. Authorized stores whose prices are determined to be noncompetitive when compared with other stores assigned to the same peer group shall be given one opportunity to resubmit their prices. After analyzing the prices submitted from this second submission, the state agency shall determine if the store qualifies to remain authorized. The state agency shall terminate the store's authorization if its prices are noncompetitive unless inadequate participant access would exist.

~~D.~~ G. The state agency uses nine business economic areas (BEAs) to initially define peer groups based on location and economic variations. For more densely populated BEAs, a second criterion used to further define peer groups is the number of unique participants served ~~(7 CFR 246.12(g)(4)(ii)(A))~~ (7 CFR 246.12). Each authorized store or applicant is assigned to a single peer group.

Business Economic Areas (ID) (# of Unique Participants Served, if applicable)	Peer Group	Cities & Counties Located in each BEA
49	10	Accomack & Northampton Counties
66	11	Cities: Danville, Galax City, & Martinsville and Counties: Carroll, Grayson, Henry, Patrick & Pittsylvania
71	12	Cities: Buena Vista, Harrisonburg, Lexington, Staunton & Waynesboro and Counties: Augusta, Bath, Highland, Page, Rockbridge & Rockingham
81	13	Cities: Bristol & Norton and Counties: Buchanan, Dickerson, Lee, Russell, Scott, Smyth, Tazewell, Washington & Wise
133	14	Halifax County
137 (0 – 100 participants)	15	Cities: Charlottesville, Colonial Heights, Emporia, Hopewell, Petersburg, & Richmond and Counties: Albemarle, Amelia, Brunswick, Buckingham, Caroline, Charles City, Charlotte, Chesterfield, Cumberland, Dinwiddie, Essex, Fluvanna, Goochland, Greene, Greensville, Hanover, Henrico, King and Queen, King William, Lancaster, Louisa, Lunenburg, Mecklenburg,
137 (101 – 250 participants)	16	
137 (251 and up participants)	17	

		Middlesex, Nelson, New Kent, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Richmond & Sussex
138 (0 – 100 participants)	25	Cities: Bedford, Clifton Forge, Covington, Lynchburg, Radford, Roanoke & Salem and Counties: Alleghany, Amherst, Appomattox, Bedford, Bland, Botetourt, Campbell, Craig, Floyd, Franklin, Giles, Montgomery, Pulaski, Roanoke & Wythe
138 (101 – 250 participants)	26	
138 (251 and up participants)	27	
173 (0 – 100 participants)	35	Cities: Chesapeake, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach & Williamsburg and Counties: Gloucester, Isle of Wight, James City, Mathews, Southampton, Surry & York
173 (101 – 250 participants)	36	
173 (251 and up participants)	37	
174 (0 – 100 participants)	45	Cities: Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas, Manassas Park & Winchester and Counties: Arlington, Clarke, Culpeper, Fairfax, Fauquier, Frederick, King George, Loudoun, Madison, Orange, Prince William, Rappahannock, Shenandoah, Spotsylvania, Stafford, Warren & Westmoreland
174 (101 – 250 participants)	46	
174 (251 and up participants)	47	

~~E.~~ H. For newly authorized stores the peer group designation assigned during the first three months is determined by the first criterion only; specifically the store's BEA default location. This default location, if applicable, is the peer group that services 0-100 unique participants. Authorized stores' peer group designation may change, based upon increases or decreases in the monthly average number of unique WIC participants being served by the store.

12VAC5-195-360. Selection decisions.

A. All retailers and applicants will compete equally for available slots located within a specific city/county or zip code, if applicable. The state agency reviews the qualifications of authorized stores and applicants located in a specific BEA or city/county within a BEA to make authorization selection decisions. Retail stores' and applicants' mandatory women and infant food and formula items used for pricing analysis purposes must qualify under the price competitive category of 40 or higher in order to be selected for authorization ~~(7 CFR 246.12(g)(4))~~ (7 CFR 246.12).

~~Low volume retailers will not be considered for reauthorization unless slots remain available after all qualified applicants and stores are selected for authorization and the low volume retailers have a competitive price score of 100. Low volume retailers will not be included in the ranking of the applicants and stores.~~

The state agency shall rank all stores that have a pricing point value of 40 or higher in ascending order, or lowest price to highest price. The stores that have the lowest total prices are considered the best qualified stores. Applicant's and store's ranking will be used to select applicants and stores for all available slots located within a specific BEA or city/county within a BEA.

B. When multiple stores have equal rankings and there are not enough slots to authorize all such stores, rankings will be further differentiated based on the following criteria in order of their application:

~~1. Five bonus points are given for retailers that are certified by the Department of Minority Business Enterprise as a minority or women owned business or have met their annual federally mandated training requirement by completing all modules of an agency-sponsored online (E-Learning) WIC Program training course.~~

~~2.~~ 1. When equal rankings ~~still~~ occur, stores with the lowest prices for selective special formulas that are eligible to be sold to WIC participants will be offered any available slots.

~~3.~~ 2. If rankings continue to be equal, the state agency shall offer available slots to the authorized store or applicant with the highest number of unique participants who reside in the zip code where the store is located.

~~4.~~ 3. If rankings continue to be equal, the state agency shall offer available slots to the authorized store or applicant with the highest square footage, excluding storage space, ~~will be used~~ to determine which stores will be offered available slots.

4. If rankings continue to be equal and the stores or applicants are owned by the same corporate entity, then the corporate representative will be allowed to decide which corporate-sponsored store shall be offered the available slot.

5. If rankings continue to be equal and the stores or applicants are not owned by the same corporate entity, then the store or applicant that has the highest food stamp sales for the previous six months will be offered the available slot.

~~After selecting all of the best qualified stores and applicants, if slots are still available, then low volume retailers whose total pricing score is 100 – Best Pricing will be offered any available slots.~~

C. If a retail store or applicant is not competitively selected for program authorization, then the store may apply again no sooner than six months after being denied authorization. Any exception to the six-month requirement shall be determined at the discretion of the state WIC director.

D. If a newly opened store is considered to be a best qualified store and is offered a slot, then the previously authorized store in that slot will be offered an extension to its retailer agreement to remain authorized for one year from the start of the new authorization period.

~~D.~~ E. The state agency shall send all authorized stores and applicants a written notice pertaining to their selection status. All stores and applicants being denied WIC Program authorization shall also receive information that explains their right to appeal the state agency's administrative decision.

~~E.~~ F. The state agency does not maintain an applicant waiting list.

12VAC5-195-370. Authorization exception decisions.

The state agency may adjust the number of retail stores authorized to ensure that adequate participant access exists. Only the state agency shall determine what constitutes adequate participant access. The state agency may make authorization exceptions to ensure that adequate access exists based on one or several of the following criteria:

1. Provide reasonable access;

2. Provide safe access due to a physical barrier or impediment including, but not limited to, a multilane highway, river, bridge; physical terrain (i.e., mountains);

3. Provide a best pricing or highly competitive alternative store location to eligible participants to purchase WIC-approved food, when compared to other available stores located within a given city and/or county;

4. Promote competition in a trade area previously identified as not having a price competitive authorized retail store location available;

5. Improve customer service or remove an existing service barrier, i.e., language, cultural;

6. Improve WIC customer access due to the fact that the store is within a safe and reasonable walking distance and is located in close proximity to one or several low income housing units where WIC participants reside; ~~or~~

7. Provide supporting documentation that the store's draw area is broader than the store's immediate trade area. The store's draw area includes cities and counties that cross geographical boundaries~~.~~; or

8. Provide supporting documentation that the specific BEA or city/county within a BEA in which the store is located is experiencing, or based on recognized projected economic indicators, is likely to experience disproportionate economic hardship.

12VAC5-195-380. ~~Low volume performance standard.~~ (Repealed.)

~~A. After six months of continuous authorization, authorized retailers shall serve a monthly average of at least 60 unique participants. Retail stores that fail to meet this low volume performance standard will be notified annually. An authorized store that has an average number of unique participants served that is lower than the standard will be considered a low volume retailer.~~

~~B. Authorized stores that demonstrate a consistent pattern of failing to meet the low volume performance standard shall be denied WIC Program authorization when their selection status is evaluated for future program authorization, unless inadequate participant access would exist. Previously authorized stores that are not selected due to low volume will receive a written letter of this administrative decision, which will provide a termination effective date.~~

~~C. Store applicants that were denied WIC Program authorization due to being designated a low volume retailer from a previous authorization period shall not be approved for authorization in a city/county that has slots available unless objective data is available that qualifies the store under one of the authorization exception criteria.~~

12VAC5-195-390. Approved food list.

A. A copy of the current Virginia WIC Program's Approved Food List (effective January 1, 2007) must be stored at each cash register where WIC transactions are handled. A copy of the ~~Approved Food List~~ approved food list must also be stored in the Vendor Manual that shall be kept onsite at the authorized store location.

B. The ~~Approved Food List~~ approved food list is used in conjunction with the WIC food instrument to identify foods that are eligible for purchase by WIC participants. The food instrument may state specific manufacturers or brands that must be purchased by program participants that are not

covered by the general description used in the ~~Approved Food List~~ approved food list.

12VAC5-195-400. Authorization stamp – assignment and usage.

A. The state agency assigns a unique stamp number to stores that are authorized and eligible to receive reimbursement for deposited food instruments. The store's authorization number is imprinted on a rubber stamp, which shall be used on every food instrument deposited by the authorized store location. Failure by the retail store to use the issued authorization stamp may result in denied payment for redeemed WIC food instruments or a store's disqualification if a pattern of noncompliance is documented.

B. Authorized stores must obtain any needed replacement stamps from the stamp supplier approved by the state agency. The state agency will provide a maximum of three stamps to an authorized store per contract period at no charge. Failure to purchase an approved stamp from the designated stamp supplier may lead to deposited food instruments being rejected and returned unpaid by the state agency.

12VAC5-195-410. Change of ownership.

A. Authorized retail stores shall provide the state agency with advance written notice of at least 15 calendar days prior to any change of ownership as outlined in ~~7 CFR 246.12(h)(3)(xvii)~~ 7 CFR 246.12.

B. A change of ownership occurs for reasons including, but not limited to, the principal owner or owners, corporate officers of the business or corporation have legally or permanently changed.

C. A store's authorization will become null and void upon a change of ownership. The rights and obligations established under a signed retailer's agreement with the WIC Program may not be transferred or assigned by the retail store or corporate owner to any other third party.

D. The new owner or store manager of the business/corporation shall apply for WIC Program authorization and submit their qualifications and a new application for evaluation based on the most current retailer selection and authorization criteria.

E. The state agency shall terminate the authorization status of any store that has undergone a change of ownership and failed to notify the state agency in accordance with the requirements outlined in the signed Retailer Agreement, effective July 1, 2008.

12VAC5-195-420. Change of location.

A. Authorized WIC retail stores shall provide the state agency written notice of a store's relocation plans within 15 calendar days prior to scheduled move date. Failure to notify the state agency in writing of such actions may result in the state agency taking administrative action including terminating for cause the store's program authorization unless inadequate participant access would exist.

B. Relocation of a retail store is defined as:

1. The store's physical location changes within the same geographical area or county/city and there is no change in ownership or pricing structure. The store meets one of the following criteria:

a. New store location is two miles or less from the former location; or

b. Majority of management and store personnel will move to the new location. If the new location is greater than two miles, the WIC Program will evaluate on a case-by-case basis to determine whether the new location is an alternative location and qualifies as a relocation versus a new store authorization;

2. The store will be open for business within 15 calendar days or less after moving to a different physical location; and

3. The former store location will be permanently closed for business.

C. The state agency shall ensure that the new location still meets the selection criteria as outlined in ~~the Retailer Selection and Authorization Policy (Policy 14.0 of the Virginia WIC Program Retailer Manual, effective April 1, 2008)~~ 12VAC5-195-340 and 12VAC5-195-360 including being price competitive. Failure to meet all selection criteria may lead to the store's authorization being terminated, unless inadequate participant access exists. Authorized stores that meet all selection criteria will be permitted by the state agency to continue their authorization without experiencing any disruption in their authorization status. The state agency must assign a new WIC authorization ID to the new store location if a new food stamp ID has been issued to the store.

12VAC5-195-450. Complaints.

A. The state agency shall maintain a system of receiving, documenting and investigating all complaints submitted by retail stores, participants, proxies, caretakers, parents, and the general public. From submitted complaints, the state agency may ~~sanction or~~ issue a written warning to participants and retail stores that abuse or misuse program benefits as outlined in the State Plan and Vendor Manual ~~(Attachment to Policy 15.0, Sanction Classification System – Violation Schedule, effective May 26, 2008)~~ (effective August 1, 2008).

B. The state agency shall forward complaints of both alleged discrimination and civil rights violations to the Secretary of Agriculture as required by federal regulations.

12VAC5-195-460. Conflict of interest.

A. Authorized retail store management shall ensure that no conflict of interest exists between any store personnel

employed by the retailer and any local, state, or federal WIC agency. This includes, but may not be limited to, store employees or spouses of store owners who are also employees of a local, state, or federal WIC agency.

B. Retail stores shall identify and report any member of the store's ownership, management, or operations staff who are directly associated with the WIC Program to the state agency. To ensure that all potential conflicts of interest are identified and reported, the retail store must complete and submit a potential conflict of interest reporting form to the state agency upon request or as deemed necessary by the state agency. Failure by the store to submit this form in the time frame designated by the state agency may result in the store's authorization status being terminated unless inadequate participant access would exist.

C. WIC participants, caretakers, or proxies who are employed at an authorized retail store may not accept or transact food instruments issued to themselves or a member of their immediate family as a function of their duties at the retail location. Authorized retail store management shall ensure all store employees adhere to this integrity requirement.

12VAC5-195-480. Participant confidentiality.

A. Participant information shall remain confidential to ensure compliance with federal regulations and to protect the right to privacy of WIC participants ~~(7 CFR 246.26(a))~~ (7 CFR 246.26).

B. Confidentiality requirements apply to information provided by a participant and that is based on direct observation by store personnel. Confidentiality requirements include, but are not limited to:

1. The prohibition of retailers from collecting personal information from WIC participants;

2. Making personal contacts with WIC participants after the WIC transaction has occurred; or

3. Sharing information on participant identification with third parties. Third parties do not include WIC Program state, local and federal agency representatives who have a legitimate business interest in the services provided to participants.

12VAC5-195-490. Retailer confidentiality.

A. Background and pricing information collected by the state agency related to evaluating the authorization status of a store or collected from food instruments redeemed by an authorized store is confidential ~~(7 CFR 246.26(e))~~ (7 CFR 246.26) and can be released only to:

1. The store itself;

2. The parent corporation; or

3. Other governmental agencies responsible for ensuring program integrity, i.e., Food Stamp Program, Office of Inspector General, United States Department of Agriculture.

B. In accordance with federal regulations, 7 CFR 246.26, confidential vendor information is any information about a vendor, whether it is obtained from the vendor or another source, that individually identifies the vendor, except for the following: store name, physical mailing address, telephone number, website, email address, store type, or authorization status. All other vendor specific information is restricted from disclosure to the public by the state agency.

~~B.~~ C. Upon receiving a written request from a store or their parent corporation, the state agency shall only release background and pricing information that has been provided by or pertains to the requestor. Under no circumstances will the state agency release confidential information about the ~~authorization status or~~ redemption revenue paid to stores owned by other corporations.

~~C.~~ D. Authorized stores' peer group designation is confidential and is restricted from disclosure to persons and entities not directly associated with the authorized store location.

~~D.~~ E. The state agency's inadequate participant access results completed for administrative purposes are considered confidential and not subject to review by the retail store or its agent, since this profile contains information protected by WIC Program regulations. Upon request, a copy of this work document can be released with any confidential information removed. This document in its entirety will be made available to appropriate governmental bodies that are responsible to ensure that the state agency has fully complied with any mandated WIC Program requirements.

12VAC5-195-500. Sales tax and coupons.

A. Authorized retail stores shall ensure that no sales tax is charged to the WIC Program. Store coupons, manufacturer coupons and loyalty card discounts may be used for WIC-approved purchases. When a WIC participant uses a coupon or discount card in conjunction with a food instrument and an item is provided free, then sales tax shall be collected directly from the participant.

B. No sales tax can be applied to the printed value of cash value food benefits. Any tax associated with the dollar amount purchased above the printed value of the cash value food benefit must be collected directly from the participant.

12VAC5-195-510. Solicitation.

A. Authorized stores shall not:

1. Initiate behavior that may be deemed aggressive or intimidating by a reasonable person in approaching

potential WIC participants in order to promote that participant's shop at a specific store location; or

2. Use any state or local agency facilities and property to post or distribute materials advertising their store location.

B. If the state agency documents that an authorized store violates either of these prohibitions, then the store's authorization may be subject to termination by the program.

C. Authorized stores shall not use any advertisement practices or procedures that may give the public or participants the impression that a special or exclusive business relationship exists between the state agency and any authorized store.

D. It is the store owner's or designated agent's responsibility to ensure all employees understand and adhere to all prohibitions and restrictions related to solicitation.

12VAC5-195-520. Training and education.

A. Training of applicants or authorized stores may be conducted by state agency staff. The state agency may also delegate full authority to individuals who have been certified as corporate trainers. Certified trainers shall attend at least one mandatory training class annually in order to remain certified.

B. The state agency shall provide mandatory annual training for previously authorized stores. The annual training requirement may be met by:

1. Submitting a newsletter training acknowledgement form;

2. Successfully completing an agency-sponsored Internet training course offered by the WIC Program; or

3. Attending an instructor-led, interactive training class.

C. Reauthorization training shall be required for previously authorized stores that have been selected under a new contract period.

D. Authorized stores can request remedial training at any time by contacting the state agency.

E. All authorized stores are required to have at least one store representative participate in annual training provided by either the state agency or a certified corporate trainer ~~(7 CFR 246.12(h)(xi))~~ (7 CFR 246.12).

F. Failure of an authorized store to meet any mandatory training requirement shall result in sanctions being imposed and the possible termination of the store's program authorization, unless inadequate participant access would exist.

12VAC5-195-530. Use of acronym and logo.

A. Authorized stores shall post a state-issued "WIC Accepted Here" window decal in the store's front entrance or in a conspicuously visible location that identifies to the general public that the store location participates in the WIC Program. Authorized stores may use alternative signage if approved by the state agency prior to being used.

B. Retail stores, food manufacturers, distributors and suppliers shall receive written approval from the state agency prior to producing or distributing window decals, channel strips ~~or,~~ shelf talkers, or other promotional items that use either the WIC acronym or logo. Stores that elect to use point-of-sale channel strips, shelf labels, or other promotional materials for a specific food category must ensure that all eligible items are consistently promoted as WIC approved. Stores are prohibited from promoting a specific manufacturer's product over another eligible WIC-approved product within the same food category (USDA Memo SFP 09-020).

C. Retail stores or applicants shall not use either the acronym "WIC," "W.I.C." or the WIC logo, including close facsimiles thereof, in total or in part, either in their official name in which the store is registered or in the name under which it does business, if different (USDA Memo SFP 09-020).

D. Retail stores, food manufacturers, distributors and suppliers shall not use the WIC acronym or logo in the packaging of their products. Retail stores, food manufacturers, distributors and suppliers shall receive written approval from the state agency before using either the WIC acronym or logo for any business or public relations purpose (USDA Memo SFP 09-020).

12VAC5-195-540. Vendor manual for the Virginia WIC Program.

All authorized stores must keep a current copy of the Vendor Manual for the Virginia WIC Program, Cashier Training Guide, and an Approved Food List at the store location authorized to participate in the program. A current copy of the Virginia Approved Food List must be kept at each cash register used to process WIC transactions. Periodically, individual sections of the Vendor Manual may be updated to reflect federally mandated regulatory changes and other WIC Program requirements. The most current version of the Vendor Manual is located on the state agency's website, which stores must access to obtain updated copies of procedures and forms.

12VAC5-195-550. High risk stores.

A. The state agency classifies each authorized store as either high risk, probationary, or nonhigh risk. In accordance with federal regulations ~~(7 CFR 246.12(j)(3))~~ (7 CFR 246.12), high risk stores have demonstrated from prior authorization history a pattern of noncompliance with documented vendor management policies or violations documented from covert, undercover buys. The state agency may also change a store's

designation to high risk based upon noncompliance documented from onsite monitoring visits.

The state agency may select stores for compliance monitoring based on statistical trends documented from a retail store's redemption pattern. A store's designation being changed to high risk will only occur as result of documented violations identified from compliance investigations or other types of objective monitoring practices used by the state agency. Stores shall also be changed to high risk if:

1. The store has been the subject of a compliance investigation by the state agency and has been cited for five or more chargeable violations within 12 consecutive months;

2. The store has received a Food Stamp Program civil monetary penalty or WIC program civil monetary penalty and is being retained in lieu of disqualification; or

3. The store's authorization status is under consideration for possible disqualification during the administrative review or appeal process.

All stores classified as high risk will receive written notification from the state WIC Program to advise them of the store's status change prior to the change becoming effective. Stores shall be designated high risk for a minimum one-year period and will have their status periodically evaluated by the state agency.

B. If a retailer is retained in lieu of disqualification or its status is changed to high risk, a written assurance letter must be submitted to the state agency within 30 calendar days after being notified of this requirement. The retailer's assurance letter must identify specific steps detailing the actions the store will take to improve its performance.

~~B.~~ C. Authorized stores designated as high risk will be selected for more frequent onsite and covert monitoring investigations.

12VAC5-195-580. Performance and administrative monitoring.

A. All applicants must successfully pass an unannounced stocking visit prior to being authorized. Applicants will receive a written letter from the state agency advising them the store has been selected for further authorization consideration. The applicant will receive a copy of the minimum stocking requirement and the letter sent to the store will identify the consequences associated with failing to meet this program standard.

B. The state agency monitors authorized store's performance throughout the contract period in order to ensure the best qualified stores are authorized. The type and level of monitoring conducted by the state agency depends upon the store's authorization status. Stores designated as high volume retailers, high risk retailers, and probationary stores are more likely to be selected for unannounced monitoring visits by the WIC Program.

C. Authorized stores that fail to consistently meet any of the general requirements and conditions for authorization may be terminated. Specific areas the state agency monitors include, but are not limited to:

~~1. Number of unique participants served;~~

~~2.~~ 1. Number of paid and rejected food instruments;

~~3.~~ 2. Prices charged for WIC-approved foods and formula;

~~4.~~ 3. Level of compliance in following program requirements; and

~~5.~~ 4. Use of approved wholesalers and suppliers in purchasing WIC-approved foods and formulas.

D. The state agency shall establish and communicate to all authorized stores and applicants the minimum stocking requirement.

E. Each federal fiscal year, a sample of authorized stores shall be selected for one or more unannounced onsite monitoring visits.

F. State agency personnel may conduct an unannounced monitoring visit to ensure that authorized stores or applicants meet all program requirements. Authorized stores and applicants shall have available onsite the minimum stocking requirement at all times as established by the state agency. The specific foods, contract formulas and administrative procedures associated with meeting this requirement are outlined in ~~Policy 10,~~ the Minimum Stocking Requirement, ~~effective May 1, 2007, of~~ which is included in the Vendor Manual.

G. Authorized stores with more than one year of continuous participation in the program may request in writing to the state agency that ~~an exception~~ a waiver be granted for one or more items that are part of the minimum stocking requirement. The state agency shall provide a written decision to the store's ~~exception~~ waiver request within 30 calendar days after receipt. The ~~exception~~ waiver to the minimum stocking requirement for a required item shall expire upon the presentation to the store, on behalf of a participant, of a WIC food instrument for the purchase of that required food item. The authorized store shall provide the food item within 48 hours, excluding weekends and holidays, after presentation of the WIC food instrument.

H. The state agency may conduct other types of unannounced onsite monitoring visits to a retail store's location including, but not limited to, random, price verification, high volume, formula audits, and high risk.

I. During the unannounced onsite monitoring visit, the state agency representative may perform, but not be limited, to the following:

1. Observe and document the level of compliance with general program requirements;

2. Validate if the minimum stocking requirement has been met;

3. Collect and confirm prices submitted by retail stores;

4. Confirm prices are posted on or in close proximity to WIC-approved foods;

5. Review purchase or invoice records;

6. Conduct formula inventory analysis;

7. Educate the retailer about program changes;

8. Provide educational materials and supplies; and

9. Provide technical consultation.

J. During the unannounced onsite monitoring visits, store management may receive the following:

1. Answers to technical or procedural questions;

2. Updated program information;

3. Additional training materials and supplies;

4. Opportunity to correct documented deficiencies, if needed;

5. Opportunity to provide shelf prices of WIC-approved items, if applicable; and

6. Opportunity to confirm results documented by the state agency representative during the monitoring visit.

K. The results from these onsite visits are documented and kept on file at the Richmond, Virginia, state agency office.

L. Each federal fiscal year, a sample of authorized stores shall be selected for one or more announced onsite formula monitoring visits. ~~The state agency shall ensure that authorized stores purchase and sell WIC approved formulas from a legitimate source.~~ The state agency shall ensure that authorized stores sell formulas that have been purchased from a WIC-approved supplier, distributor, wholesaler, or an authorized resource. A listing of WIC-approved suppliers, distributors, wholesalers, and authorized resources is located on the state agency's website. This outcome is accomplished by state agency personnel reviewing formula purchasing records and invoices, comparing formula redemption data from WIC sales and completing a pre- and postphysical inventory of formula available at the store location during a specific analysis period. Stores whose purchase records do not support the quantity of WIC sales volume for a selective formula item based upon redeemed food instruments may be issued sanctions, fined, or disqualified from the WIC Program. The results from a formula monitoring visit are documented and a written assessment is sent to the store once the state agency has completed its analysis.

M. Authorized stores that do not remain price competitive~~,~~ fail to maintain the minimum stocking requirement or fail to adhere to the retailer agreement may be fined or have their authorization terminated~~,~~ unless inadequate participant access exists. Depending upon the service delivery impact, the state agency may waive terminating a store that fails to comply with any of these requirements until an alternative store located in the same area can be authorized. The state agency will evaluate and document the reasons for making any authorization exception decisions.

12VAC5-195-590. Reimbursement and payments.

A. The state agency shall use a prepayment edit process to screen all deposited food instruments. For each processed food instrument, the state agency shall either:

1. Pay as submitted;

2. Make a price adjustment, if applicable; or

3. Deny payment of the deposited food instrument.

B. The state agency's reimbursement responsibilities in making payments against deposited and undeposited food instruments include, but are not limited to:

1. Ensuring payments are made to authorized stores that have a signed retailer agreement with the Virginia WIC Program. Unauthorized stores will not be paid for any mistakenly accepted and deposited food instruments;

2. Ensuring the maximum reimbursement levels used by its banking contractor, based upon peer groups, are reasonable for the food and formula items prescribed for purchase by participants;

3. Reconsidering for payment WIC food instruments not paid or partially paid provided the food instruments are submitted to the state agency within 50 calendar days of the first date printed on the food instrument;

4. Making price adjustments to the reimbursement amount paid to retail stores in order to ensure individual store's reimbursement levels remain eligible for authorization, based upon competitive prices charged by similar stores;

5. Collecting bank account and routing numbers from applicants and authorized stores in order to process direct deposit payments using an Automated Clearinghouse (ACH);

6. Ensuring prompt ACH credits are made to the retailer's bank account when appropriate;

7. Collecting retailer's prices using an electronic, Internet-based application;

8. Identifying retailers whose prices are noncompetitive and take administrative actions including possible termination of the retailer's authorization;

9. Complying with all federal regulations and guidelines that require administrative approval by USDA prior to making payments, as applicable;

10. Providing written communications to all authorized stores containing the procedures used by the program to pay or deny payments for all deposited food instruments; and

11. Recouping overpayments due to banking or procedural errors, if applicable, from authorized stores.

C. Authorized stores must deposit food instruments within 14 calendar days of the last date printed on the food instrument.

D. Food instruments or image replacement documents (IRDs) rejected for payment due to "unreadable vendor stamp" or "no vendor stamp" error messages must be corrected and redeposited within 30 calendar days of the last date printed on the food instrument.

E. ~~Food instruments or IRDs rejected for payment or undeposited FIs that require WIC Program review and exception payment consideration must be submitted by the authorized store to the state agency within 30 calendar days of the last date printed on the food instrument.~~ All food instruments or IRDs rejected for payment or undeposited FIs require WIC Program review for exception payment consideration and must be submitted by the authorized store to the state agency. A store must also simultaneously submit a written request and justification for payments on undeposited or rejected FIs or IRDs. The state agency reserves the right to deny a submitted request for payment depending on the explanation provided by the store.

1. Stores must submit their undeposited or rejected FIs or IRDs and justifications to the state agency within 30 calendar days of the last date printed on the food instrument.

2. Undeposited or rejected FIs or IRDs sent to the state agency that are greater than 30 calendar days from the last date printed on the food instrument may not be eligible for payment and may require USDA approval.

F. A maximum allowable reimbursement amount for each peer group and food item combination is established using pricing data ~~(7 CFR 246.12(h)(3)(viii))~~ (7 CFR 246.12). Each food item combination is identified by a unique food instrument type identifier. More than 4,000 unique food combinations exist with different reimbursement maximum amounts. Authorized stores that submit prices determined to be noncompetitive will not have their prices used when the state agency computes the maximum allowable reimbursement amount used for making price adjustments.

G. Stores may only get reimbursed for mandatory and optional foods and formula products they have submitted prices for prior to redeeming FIs for those products. Redeemed FIs may be subject to repayment as a vendor claim if they include optional items for which a store has failed to submit prices. Stores must ensure that the most current shelf prices have been submitted to the WIC Program for all mandatory items. Failure to submit prices or providing inaccurate prices for any mandatory food items may lead to a store's authorization being terminated unless inadequate participant access would exist.

H. Contract and special formulas where pricing information is collected via the Internet-based application by the state agency are eligible for payment to authorized stores. Prices are purposely not collected by the state agency for formulas that should not be redeemed at retail stores. Food instruments redeemed for these types of special formulas are subject to repayment by the store.

~~G.~~ I. A maximum reimbursement amount will be established for cash value food ~~instruments~~ benefits used by participants to purchase fruits and vegetables. ~~The retailer must allow participants to spend up to the maximum payable amount printed on each of these types of food instruments. If the total dollar value being purchased exceeds the cash value, then the participant must be allowed to pay up to $.99 per food instrument above the printed value.~~ For cash value food benefits only, if the total dollar amount being purchased by the participant exceeds the printed cash value then the participant shall be allowed to pay the amount over the printed value. The amount written on the food instrument must not exceed the maximum reimbursement amount printed on it.

~~H.~~ J. The food instrument type/peer group pricing maximum amount may be adjusted monthly by the state agency, depending upon external factors including, but not limited to, wholesale price increases. The reimbursement maximum used for the various food instrument types peer group combinations are not distributed to authorized stores prior to being used by the banking contractor.

~~I.~~ K. Food instruments or IRDs that are ineligible for payment and are rejected will be returned to the store's depository bank by the state agency's banking contractor. These returned food instruments will be stamped with a descriptive error message.

~~J.~~ L. The state agency may make payment exceptions for food instruments that would normally be denied payment by its banking services contractor. The authorized store shall submit all such requests in writing, including a justification, within 30 calendar days from the last date printed on the food instrument. The state agency will send a payment disposition decision to the requestor within 30 calendar days, after receipt.

~~K.~~ M. The state agency shall use a postpayment review process to prospectively evaluate the reimbursement amount paid against redeemed food instruments in order to identify

excessive or improperly redeemed food instruments in accordance with federal regulations ~~(7 CFR 246.12(k)(1)-(3))~~ (7 CFR 246.12). From the postpayment review process, the state agency may determine that one or more payments already made to a retail store were ~~noncompliant with the vendor management policies and procedures (Policy 9.0, Reimbursement of Paid and Returned WIC Food Instruments, effective May 26, 2008, of the Vendor Manual), including the signed retailer agreement~~ ineligible for payment as a result of a store failing to submit pricing data for the purchased item or items. The state agency reserves the right to bill and recoup payments of these ineligible payments, which will be referred to as a vendor claim ~~(7 CFR 246.12(h)(3)(ix))~~ (7 CFR 246.12). The state agency shall not bill an authorized store if the vendor claim amount is less than $10.

~~L.~~ N. A retail store that is not authorized to participate in the Virginia WIC Program that accepts a food instrument will not be reimbursed for any food instruments redeemed by a WIC participant.

O. A store must submit a direct deposit ACH form to the state agency that identifies any bank changes to its routing or account number. A direct deposit ACH form must be submitted at least 14 days prior to the change effective date. If the state agency's banking contractor identifies that the store's bank account or routing number is not valid, then the store will receive one written notice from the state agency. Failure by the store to resolve any reported discrepancies within 30 days after a written notice has been sent by the state agency may lead to the store being ineligible to receive payments for rejected FIs.

P. Retail stores are responsible for all bank handling fees and charges associated with doing business with the WIC Program.

12VAC5-195-600. Sanctions and administrative actions.

A. Each federal fiscal year, the state agency shall conduct compliance investigations on a minimum of 5.0% of authorized stores ~~(7 CFR 246.12(j)(4))~~ (7 CFR 246.12), including completing investigations of all high risk stores, all probationary stores and selective nonhigh risk stores. The state agency will conduct at least two compliance buys at each store selected for an investigation.

B. The state agency will provide written notification to the authorized store of the investigation results, including the store's violation of any statutes or regulations governing its participation in the WIC Program unless fraudulent activities~~, such as overcharging the program,~~ have been documented. Once an investigation has been closed, stores with documented violations will receive a final written report of the agency's findings. The final report will identify what administrative action will be taken by the state agency against the authorized store.

C. Violations are categorized as either state agency or federally mandated. For federally mandated violations, a pattern consisting of four documented incidents of the same violation must occur during a single investigation. ~~State agency violations do not require a pattern of noncompliance before administrative action is taken (7 CFR 246.12(l)).~~

D. For federally mandated violations that include, but are not limited to, fraud, trafficking, sale of alcohol or alcoholic beverages or tobacco products, ~~sale of detergent, kitchen items, and overcharging the WIC Program,~~ the state agency will not provide the store with prior written notice that a violation or violations were documented before imposing administrative sanctions.

E. For selective state agency violations ~~that include, but are not limited to, forgery or overcharge discrepancies~~, the state agency shall not provide prior written notice that the violation has occurred, in order to ensure the integrity of the investigative process.

F. The type of documented violation dictates the administrative action taken including, but not limited to:

1. Provision of a written warning;

2. Imposition of a technical penalty fine;

3. Assessment of a civil monetary penalty (CMP) in lieu of disqualification; or

4. Disqualification of an authorized store.

The total period of disqualification imposed for state agency violations identified as part of a single investigation may not exceed one year. The state agency reserves the right to waive a disqualification requirement if inadequate participant access would exist.

G. The state agency uses a multitier sanction schedule that consists of:

Class:	Description:	Description:	Administrative Actions:
A	Technical program violations	Represents procedural and food instrument handling errors.	$100 fine assessed per documented incident, as outlined in the Sanction/Violation schedule (effective March 9, 2009), including repeat incidents of the same violation, plus a written warning sent to the store.
B	Serious program violations	Represents noncompliance errors documented either from compliance investigations or noncompliance with provisions outlined in the retailer agreement.	Eight or more technical program violations, as outlined in the Sanction/Violation schedule, within a consecutive 12-month period of time; or One-year disqualification, if a pattern of noncompliance is required and met. ~~Otherwise, a $100 technical fine per incident shall be assessed for all federally mandated violations that do not meet the pattern threshold requirement.~~, as outlined in the Sanction/Violation schedule; or One-year disqualification if a pattern of noncompliance is not required and the violation has been documented as outlined in the Sanction/Violation schedule.
C	Critical program violations	Represents mandatory federal sanctions that require a pattern of noncompliance, i.e., overcharging.	~~Three~~ Four documented incidents during a single investigation as outlined in the Sanction/Violation schedule – Three-year disqualification~~.~~; or ~~A $100 technical fine per incident shall be assessed for all federally mandated violations that do not meet the pattern threshold requirement.~~ One documented incident as outlined in the Sanction/Violation schedule during a single investigation if a pattern is not required – Three year disqualification.
D	Major program violations	Represents mandatory federal sanctions, i.e., administrative finding of trafficking	Six-year disqualification – only one documented incident is required as outlined in the Sanction/Violation schedule; or Permanent disqualification – only one documented incident is required, as outlined in the Sanction/Violation schedule.
E	Warning	Represents a documented violation, but does not warrant points being assessed and/or a fine being charged.	Written warning sent to the retail store.

The date on which violations become effective is determined by the documented date on the final compliance investigation letter. Class A, B, and E violations have an active life of one year, a Class C violation has an active life of three years, and

a Class D violation has an active life of six years or permanent disqualification.

H. If a retailer has a pattern of three documented incidents within a 12-month period of failure to meet the minimum stocking requirement or failure to properly stamp 50 or more deposited food instruments, then the store will be disqualified for a one-year period unless inadequate participant access would exist.

~~H.~~ I. All documented overcharges or payments for ineligible food items identified during a compliance investigation will be considered a vendor claim and be subject to repayment.

~~I.~~ J. Copies of any investigative evidence collected by the state agency from an open compliance investigation will be available to the authorized store, upon request, once the investigation has been closed and the store is notified in writing of the final compliance investigation results.

K. A retailer may apply for WIC authorization after the store has met any disqualification period imposed upon it. There is no automatic reinstatement of a retailer once the disqualification period has been met.

L. The state agency shall not issue sanctions solely as a result of complaints submitted by participants.

12VAC5-195-610. Participant access.

A. Prior to taking disqualification actions against an authorized store, the state agency shall complete a participant access assessment ~~(7 CFR 246.12(l)(ix))~~ (7 CFR 246.12). This type of assessment is completed for denied authorizations if an informal settlement meeting or full administrative review is requested by a store applicant. Participant convenience is not a valid consideration for the state agencies in making any adequate access decisions.

B. Participant access will be a factor considered by the state agency in deciding if a store shall be assessed a civil monetary penalty in lieu of disqualification or when a store applicant is eligible as an authorization exception.

C. The state agency shall use the same criteria established for making authorization exceptions in deciding if adequate participant access exists.

D. The participant access analysis completed by the state agency contains confidential information. A copy of this internal work document shall not be given to retail stores or their representatives.

12VAC5-195-630. Retained in lieu of disqualification.

A. An authorized store with documented administrative findings that warrant WIC Program disqualification actions may be retained in lieu of disqualification if the state agency determines that inadequate participant access would exist. The state agency will evaluate the impact on participants and the preventive procedures the store intends to take in order to decide if the store will be allowed to pay a civil monetary penalty fine rather than being disqualified.

B. The state agency shall notify the authorized store in writing if it will be retained in lieu of disqualification and the civil monetary penalty fine that has been assessed ~~(7 CFR 246.12(l)(x))~~ (7 CFR 246.12).

C. If a retailer fails to pay a civil monetary penalty that has been assessed, then the state agency shall disqualify the retailer for a period equal to the sanction for which the civil monetary penalty was originally assessed.

12VAC5-195-640. Civil monetary penalty (CMP) fines.

A. A civil monetary penalty (CMP) fine may be assessed for documented state agency and federally mandated violations ~~(7 CFR 246.12(l)(x))~~ (7 CFR 246.12).

B. The state agency uses a federally mandated formula to calculate both state and federally mandated CMPs that are assessed. The maximum civil monetary penalty assessed shall comply with federal requirements as outlined in ~~7 CFR 246.12(l)(2)~~ 7 CFR 246.12. The state agency is unable to make any reductions in the maximum CMP amount due since this formula is defined in federal regulations.

C. The same formula is used to calculate the civil monetary penalty fine for stores retained in lieu of disqualification due to documented state agency sanctions. The state agency has the authority to reduce the fine amount being assessed against the store by no more than 50%. The state agency must document in its records the specific factors supporting this administrative decision.

D. A CMP shall be paid in full or based upon an agreed installment plan. Failure of the authorized store to pay any scheduled installments in a timely manner will lead to the store's disqualification for the original disqualification period.

E. Payments shall be made by certified check, cashier check, or money order. Payments shall be made out to the Virginia WIC Program and mailed to the address identified on the penalty fine statement.

F. The state agency will process all past due obligations for any of the following including penalty fines, vendor claims, civil monetary penalty fines or overcharges assessed against authorized stores in accordance with the Office of the Comptroller's Policies and Procedures~~.~~, Section Number 205000 (Accounts Receivable), dated June 2004. The state agency will also process all past due financial obligations in accordance with the Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia).

G. The state agency shall notify the Food Stamp Program in writing within 15 calendar days after assessing a CMP against an authorized store being retained in lieu of disqualification.

12VAC5-195-660. Informal settlement meetings.

A. ~~An informal settlement meeting may be requested by an authorized store or applicant. Authorized stores may request an informal settlement meeting for any adverse action or program decision impacting a store. A store applicant may request an informal settlement meeting related to a denied authorization decision. During this meeting, the state agency will be represented by the state WIC director or designee.~~ If an authorized store is being considered for possible adverse action, including but not limited to authorization denial and program disqualification, the state agency shall offer an optional informal settlement meeting with store management prior to taking administrative action. The state WIC director or designee shall be in attendance. The purpose of the informal settlement meeting is to:

1. Identify areas of noncompliance;

2. Provide a forum for the store to submit information about the impact of the adverse action on WIC participants;

3. Review criteria for authorization exception decisions pursuant to 12VAC5-195-370;

4. Review the inadequate participant access results, if applicable;

5. Review the civil monetary penalty fine for stores being retained in lieu of disqualification, if applicable; and

6. Provide information to the store regarding its appeal rights, if applicable.

B. The retail store or applicant has 15 calendar days from the date of receipt of the ~~denial notice or adverse action~~ state agency correspondence to postmark a written request for an informal settlement meeting.

C. The request for the informal settlement meeting can be hand delivered, mailed by US mail, UPS, or FedEx, sent by facsimile transmission or sent via email to the vendor manager.

D. Upon receipt of the retail store's or applicant's request for an informal settlement meeting, the state agency will confirm a date, time, place and method for the informal settlement meeting. ~~The meeting may take place either through a face-to-face meeting or through video conference. Failure to attend the scheduled meeting on the agreed upon date and time will lead to the retail store forfeiting its rights to any further informal settlement meetings.~~

E. ~~The retail store or applicant will have one opportunity to reschedule the informal settlement meeting time or date established with the state agency.~~ All requests to reschedule the meeting must be submitted in writing at least 24 hours before the scheduled meeting date, unless an emergency occurs, as determined at the discretion of the state WIC director or designee.

F. If the retail store representative is more than 45 minutes late from the agreed upon meeting start time, then this will be considered a "no show" unless he can provide documentation that the state WIC director or designee determines justifies his tardiness or failure to appear. ~~This outcome means that the retail store has forfeited its rights to the informal settlement meeting.~~ The state agency will proceed with administrative decisions without the input of the retail store should the representative either fail to schedule, fail to appear, or fail to reschedule the informal settlement meeting.

~~G. If an authorized store is being considered for possible program disqualification or other adverse actions, the state agency shall schedule an optional informal settlement meeting with store management prior to taking administrative action. The state WIC director or designee shall be in attendance. The purpose of the informal settlement meeting is to:~~

~~1. Identify areas of noncompliance;~~

~~2. Provide a forum for the store to submit information about the impact of the potential disqualification on WIC participants;~~

~~3. Review the inadequate participant access results and the civil monetary penalty fine for stores being retained in lieu of disqualification; and~~

~~4. Provide information to the store regarding its appeal rights.~~

~~H.~~ G. Informal settlement meetings are ~~primarily held~~ either conducted through face-to-face meetings in Richmond, Virginia, or via video conference. ~~A store may request that the informal settlement meeting be held using videoconferencing technology. This option will be available to the store if traveling to Richmond will create an undue hardship on the owner or store representative. Undue hardship is defined as travel distance greater than a three-hour drive one way or any other situation determined at the discretion of the state WIC director or designee. The~~ For informal settlement meetings that are held via video conference, the authorized store or applicant would be required to travel to a local agency that has videoconferencing equipment available.

~~I.~~ H. After the informal settlement meeting is held and all supporting documentation is received by the state agency, the state agency shall send within 15 days a written summary of the meeting's results to a designated store representative. If the resolution offered from the informal settlement meeting is unacceptable to the retail store, then the retail store or applicant may request a full administrative review in writing. This written request must be submitted to the vendor manager and postmarked within 15 calendar days from the date of receipt of the informal settlement meeting summary. The vendor manager will identify if the store's request qualifies under federal regulations for a full administrative review. If

the store's request is not eligible, then the store will receive a written response from the vendor manager of this decision.

~~J. An authorized store or applicant may elect not to participate in an informal settlement meeting and request a full administrative review. This option is available if it qualifies under federal regulations (7 CFR 246.18) for a full administrative review and is submitted within 15 days after receiving an official notice of the adverse actions from the state agency.~~

12VAC5-195-670. Full administrative review.

A. Authorized retail stores and applicants shall be offered an opportunity to request a full administrative review for only the adverse action cited in subsection O of this section.

B. The retail store or applicant has 15 calendar days from the date of receipt of the denial notice, either by letter or an electronic format, or disqualification letter to request a full administrative review.

C. The request for the full administrative review can be mailed by US mail, sent by facsimile transmission or sent via email to the vendor manager. If the request is mailed, it must be postmarked within 15 calendar days from the date of receipt of letter or electronic notification from the state agency, whichever comes first.

D. The retail store or applicant must indicate whether or not he will be represented by an attorney when the full administrative review request is made. The retail store or applicant must also provide the state agency with copies of any written information to be used during the review and names of witnesses that will be called at least five days prior to the scheduled full administrative review. Failure to notify the state agency of these items may result in a rescheduled date and time for the full administrative review or the exclusion of documents and witnesses from the full administrative review.

E. Upon receipt of the retail store's or applicant's request for a full administrative review, the state agency will confirm a date, time, and place for the review within 30 days. For authorized stores, the review must be scheduled to take place within 60 calendar days after the written request is received by the state agency unless otherwise agreed to by the parties involved.

F. Failure to attend the scheduled review on the agreed upon date and time will lead to the retail store forfeiting its rights to any further administrative reviews.

G. The retail store or applicant will have one opportunity to reschedule the full administrative review's date or time. All requests to reschedule the review date or time must be submitted in writing at least 24 hours before the scheduled review date, unless an emergency occurs, as determined at the discretion of the state WIC director or designee. Rescheduled reviews shall take place within four weeks of the originally scheduled date unless the parties mutually agree on a later date.

H. If the retail store representative is more than 45 minutes late from the agreed upon review start time, then this will be considered a "no show" unless he can provide documentation that the WIC director or designee determines justifies his tardiness or failure to appear. This outcome means that the retail store has forfeited its rights to a full administrative review.

I. A full administrative review is conducted by an adjudication officer who is employed by the Virginia Department of Health. The adjudication officer shall ensure that administrative actions taken by the WIC Program are consistently and fairly applied and that those administrative actions comply with established policies, procedures and federal and state regulations. A representative from the state agency will present its case to the adjudication officer and retail store or applicant representative. Conversely, the storeowner or designated representative, which may include legal counsel, will present its case to the adjudication officer.

J. All full administrative reviews are held in Richmond, Virginia.

K. After a full administrative review is held, the state WIC director shall provide written notification of the adjudication officer's decision, including the basis for the decision, within 90 calendar days of the date of receipt of the full administrative appeal review request, unless otherwise agreed to by the parties involved. This notification will also be sent to the appropriate USDA Food and Nutrition Services office.

L. Authorized retail stores being disqualified may continue to deposit WIC food instruments until a decision has been rendered from the full administrative review. The adverse action effective date shall be postponed by the state agency pending the outcome of the review.

M. In accordance with ~~7 CFR 246.18(b)(2)~~ 7 CFR 246.18, if an authorized store does not request a full administrative review, then disqualification becomes effective 15 calendar days after the retailer receives the state agency's written disqualification letter.

N. An authorized retailer being retained in lieu of disqualification may elect to voluntarily withdraw from the WIC Program rather than pay a mandated civil monetary penalty fine. If the retailer voluntarily withdraws and does not pay a civil monetary penalty fine that previously had been imposed by the program, then a disqualification status will be documented in the state agency's records. The disqualification period may range from one to six years, depending on the type of sanctions and violations documented by the state agency.

O. The state agency shall provide a full administrative review to retail stores or applicants for the following adverse

actions pursuant to ~~7 CFR 246.18(a)(1)(i) and (ii)~~ 7 CFR 246.18:

1. Denial of authorization based on the vendor selection criteria for competitive price or for minimum variety and quantity of authorized supplemental foods ~~(7 CFR 246.12(g)(3)(i) and (ii))~~ or on a determination that the vendor is attempting to circumvent a sanction ~~(7 CFR 246.12(g)(4))~~ (7 CFR 246.12);

2. Denial of authorization based upon the vendor selection criteria for business integrity or for a current Food Stamp Program disqualification or civil money penalty for hardship ~~(7 CFR 246.12(g)(3)(iii) and (iv)~~ (7 CFR 246.12);

3. Denial of authorization based on a state agency established vendor selection criteria if the basis of the denial is a vendor sanction or a Food Stamp Program withdrawal of authorization or disqualification;

4. Denial of authorization based on the state agency's retailer limiting criteria ~~(7 CFR 246.12(g)(2))~~ (7 CFR 246.12);

5. Denial of authorization because a vendor submitted its application outside the timeframes during which applications are accepted or processed as established by the state agency under ~~7 CFR 246.12(g)(7)~~ (7 CFR 246.12);

6. Termination of a retailer agreement because of a change in ownership or location or cessation of operations ~~(7 CFR 246.12(h)(3)(xvii))~~ (7 CFR 246.12);

7. Termination of a retailer agreement for cause;

8. Disqualification based on documented WIC Program violations;

9. Disqualification based on a trafficking conviction ~~(7 CFR 246.12(l)(1)(i))~~ (7 CFR 246.12);

10. Disqualification based on the imposition of a Food Stamp Program civil ~~montary~~ monetary penalty for hardship ~~(7 CFR 246.12(l)(2)(ii))~~ (7 CFR 246.12);

11. Disqualification or civil monetary penalty imposed in lieu of disqualification based on a mandatory sanction imposed by another WIC state agency ~~(7 CFR 246.12(l)(2)(iii))~~ (7 CFR 246.12); or

12. Imposition of a fine or a civil monetary penalty in lieu of disqualification.

P. The state agency shall not provide a full administrative review to retail stores that appeal the following actions pursuant to ~~7 CFR 246.18(a)(1)(iii)~~ 7 CFR 246.18:

1. The validity or appropriateness of the state agency's vendor limiting or selection criteria ~~(7 CFR 246.12(g)(2) and (3))~~ (7 CFR 246.12);

2. The validity or appropriateness of the state agency's vendor peer group criteria and the criteria used to identify vendors that are above 50% vendors or comparable to above 50% vendors;

3. The validity or appropriateness of the state agency's participant access criteria and the state agency's participant access determinations;

4. The state agency's determination whether a vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation ~~(7 CFR 246.12(l)(1)(i)(B))~~ (7 CFR 246.12);

5. Denial of authorization if the state agency's vendor authorization is subject to the procurement procedures applicable to the state agency;

6. The expiration of the retailer's agreement;

7. Disputes regarding food instrument payments and vendor claims other than the opportunity to justify or correct a vendor overcharge or other error as permitted by ~~7 CFR 246.12(k)(3)~~ (7 CFR 246.12); or

8. Disqualification of a vendor as a result of disqualification from the Food Stamp Program ~~(7 CFR 246.12(l)(1)(vii))~~ (7 CFR 246.12).

Q. A full administrative review request shall not be denied or dismissed unless:

1. The request to the state agency is not postmarked within 15 calendar days of the applicant or authorized store's receipt of the notice of disqualification or adverse action;

2. The request to the state agency was submitted by an individual who does not have the legal or delegated authority to represent the owner;

3. The retailer or authorized representative withdraws the request in writing;

4. The retailer or authorized representative fails without good cause to appear at the scheduled review date and time; or

5. The request for a full administrative review is not eligible for this consideration based on the specific exclusion criteria outlined in subsection P of this section.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-195)

~~Virginia WIC Program Retailer~~ Vendor Manual ~~(Vendor Manual)~~ for the Virginia WIC Program, August 2008, Virginia Department of Health~~:~~.

~~Policy 9.0, Reimbursement of Paid and Returned WIC Food Instruments, effective May 26, 2008.~~

~~Policy 10.0, Minimum Stocking Requirement, effective May 1, 2007.~~

~~Policy 14.0, Retailer Selection and Authorization, effective April 1, 2008.~~

~~Policy 14.1, Business Integrity, effective August 1, 2003.~~

~~Attachment to Policy 15.0, Sanction Classification System – Violation Schedule, effective May 26, 2008.~~

Virginia WIC Program Approved Food List, effective January 1, 2007, Virginia Department of Health.

Retailer Agreement, effective July 1, 2008, Virginia Department of Health.

Volume No. 1 – Policies & Procedures, Function No. 20000 – General Accounting, Section No. 20500 – Accounts Receivable, dated June 2004, Office of the Comptroller, Commonwealth of Virginia.

Virginia WIC Program Sanction Violation Schedule, March 2009, Virginia Department of Health.

USDA Memo – SFP 09-020 Clarification on the use of the WIC acronym and logo, January 2009, United States Department of Agriculture, Food and Nutrition Service.

VA.R. Doc. No. R09-1771; Filed June 12, 2009, 4:11 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Emergency Regulation

Title of Regulation: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-226, 12VAC30-50-420, 12VAC30-50-430).**

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Effective Dates: July 1, 2009, through June 30, 2010.

Agency Contact: Catherine Hancock, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4272, FAX (804) 786-1650, or email catherine.hancock@dmas.virginia.gov.

Preamble:

Section 2.2-4011 of the Administrative Process Act states that an agency may adopt regulations in an emergency situation (i) upon consultation with the Attorney General after the agency has submitted a request stating in writing the nature of the emergency, and at the sole discretion of the Governor; (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4; or (iii) in a situation in which an agency has an existing emergency regulation, additional emergency regulations may be issued as needed to address the subject matter of the initial emergency regulation provided the amending action does not extend the effective date of the original action. This suggested emergency regulation meets the standard at § 2.2-4011 B as discussed below.

The agency is proposing this regulatory action to comply with Item 306 OO of the 2009 Appropriation Act that gives DMAS authority to implement prior authorization for community-based mental health services for children and adults. In recent years the utilization of certain community-based mental health services has increased substantially. In order to address these expected increases in utilization, the General Assembly provided DMAS authority to implement prior authorization of these services in order to ensure that such services are provided based on Medicaid service criteria.

This action implements new prior authorization for community mental health services for children and adults. DMAS already has regulations that address prior authorization for other services. Therefore, those aspects of the Item 306 OO of the 2009 Appropriation Act are already in operation and need not be addressed in this action. The particular change implemented is the addition of a prior authorization requirement to case management services for seriously mentally ill adults and emotionally disturbed children (12VAC30-50-420) and for youth at risk of serious emotional disturbance (12VAC30-50-430). In addition, DMAS is adding this same requirement to the following services detailed in 12VAC30-50-226: Day treatment/partial hospitalization services, psychosocial rehabilitation, intensive community treatment, and mental health support services.

12VAC30-50-226. Community mental health services.

A. Definitions. The following words and terms when used in these regulations shall have the following meanings unless the context clearly indicates otherwise:

"Certified prescreener" means an employee of the local community services board or its designee who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by ~~DMHMRSAS~~ DBHDS.

"Clinical experience" means practical experience in providing direct services to individuals with mental illness or mental retardation or the provision of direct geriatric services or special education services. Experience may include supervised internships, practicums, and field experience.

"Code" means the Code of Virginia.

"DBHDS" means the Department of Behavioral Health and Developmental Services consistent with Chapter 3 (§ 37.2-300 et seq.) of Title 37.2 of the Code of Virginia.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

~~"DMHMRSAS" means Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with Chapter 1 (§ 37.1-39 et seq.) of Title 37.1 of the Code of Virginia.~~

"Human services field" means social work, gerontology, psychology, psychiatric rehabilitation, special education, sociology, counseling, vocational rehabilitation, and human services counseling or other degrees deemed equivalent by DMAS.

"Individual" means the patient, client, or recipient of services set out herein.

"Individual service plan" or "ISP" means a comprehensive and regularly updated statement specific to the individual being treated containing, but not necessarily limited to, his treatment or training needs, his goals and measurable objectives to meet the identified needs, services to be provided with the recommended frequency to accomplish the measurable goals and objectives, and estimated timetable for achieving the goals and objectives. The provider shall include the individual in the development of the ISP. To the extent that the individual's condition requires assistance for participation, assistance shall be provided. The ISP shall be updated as the needs and progress of the individual changes.

"Licensed Mental Health Professional" or "LMHP" means an individual licensed in Virginia as a physician, a clinical psychologist, a professional counselor, a clinical social worker, or a psychiatric clinical nurse specialist.

"Qualified mental health professional" or "QMHP" means a clinician in the human services field who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis. If the QMHP is also one of the defined licensed mental health professionals, the QMHP may perform the services designated for the Licensed Mental Health Professionals unless it is specifically prohibited by their licenses. These QMHPs may be either a:

1. Physician who is a doctor of medicine or osteopathy and is licensed in Virginia;

2. Psychiatrist who is a doctor of medicine or osteopathy, specializing in psychiatry and is licensed in Virginia;

3. Psychologist who has a master's degree in psychology from an accredited college or university with at least one year of clinical experience;

4. Social worker who has a master's or bachelor's degree from a school of social work accredited or approved by the Council on Social Work Education and has at least one year of clinical experience;

5. Registered nurse who is licensed as a registered nurse in the Commonwealth and has at least one year of clinical experience; or

6. Mental health worker who has at least:

a. A bachelor's degree in human services or a related field from an accredited college and who has at least one year of clinical experience;

b. Registered Psychiatric Rehabilitation Provider (RPRP) registered with the International Association of Psychosocial Rehabilitation Services (IAPSRS) as of January 1, 2001;

c. A bachelor's degree from an accredited college in an unrelated field with an associate's degree in a human services field. The individual must also have three years clinical experience;

d. A bachelor's degree from an accredited college and certification by the International Association of Psychosocial Rehabilitation Services (IAPSRS) as a Certified Psychiatric Rehabilitation Practitioner (CPRP);

e. A bachelor's degree from an accredited college in an unrelated field that includes at least 15 semester credits (or equivalent) in a human services field. The individual must also have three years clinical experience; or

f. Four years clinical experience.

"Qualified paraprofessional in mental health" or "QPPMH" means an individual who meets at least one of the following criteria:

1. Registered with the International Association of Psychosocial Rehabilitation Services (IAPSRS) as an Associate Psychiatric Rehabilitation Provider (APRP), as of January 1, 2001~~;~~.

2. Has an associate's degree in one of the following related fields (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and has at least one year of experience providing direct services to persons with a diagnosis of mental illness~~;~~.

3. An associate's or higher degree, in an unrelated field and at least three years experience providing direct services to persons with a diagnosis of mental illness, gerontology clients, or special education clients. The experience may include supervised internships, practicums and field experience.

4. A minimum of 90 hours classroom training in behavioral health and 12 weeks of experience under the direct personal supervision of a QMHP providing services to persons with mental illness and at least one year of clinical experience (including the 12 weeks of supervised experience).

5. College credits (from an accredited college) earned toward a bachelor's degree in a human service field that is equivalent to an associate's degree and one year's clinical experience.

6. Licensure by the Commonwealth as a practical nurse with at least one year of clinical experience.

B. Mental health services. The following services, with their definitions, shall be covered: day treatment/partial hospitalization, psychosocial rehabilitation, crisis services, intensive community treatment (ICT), and mental health supports. Staff travel time shall not be included in billable time for reimbursement.

1. Day treatment/partial hospitalization services shall be provided in sessions of two or more consecutive hours per day, which may be scheduled multiple times per week, to groups of individuals in a nonresidential setting. These services, limited annually to 780 units, include the major diagnostic, medical, psychiatric, psychosocial and psychoeducational treatment modalities designed for individuals who require coordinated, intensive, comprehensive, and multidisciplinary treatment but who do not require inpatient treatment. One unit of service shall be defined as a minimum of two but less than four hours on a given day. Two units of service shall be defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. Authorization is required for Medicaid reimbursement.

a. Day treatment/partial hospitalization services shall be time limited interventions that are more intensive than outpatient services and are required to stabilize an individual's psychiatric condition. The services are delivered when the individual is at risk of psychiatric hospitalization or is transitioning from a psychiatric hospitalization to the community.

b. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. Individuals must meet at least two of the following criteria on a continuing or intermittent basis:

(1) Experience difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or homelessness or isolation from social supports;

(2) Experience difficulty in activities of daily living such as maintaining personal hygiene, preparing food and maintaining adequate nutrition, or managing finances to such a degree that health or safety is jeopardized;

(3) Exhibit behavior that requires repeated interventions or monitoring by the mental health, social services, or judicial system; or

(4) Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.

c. Individuals shall be discharged from this service when they are no longer in an acute psychiatric state and other less intensive services may achieve psychiatric stabilization.

d. Admission and services for time periods longer than 90 calendar days must be authorized based upon a face-to-face evaluation by a physician, psychiatrist, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or psychiatric clinical nurse specialist.

2. Psychosocial rehabilitation shall be provided at least two or more hours per day to groups of individuals in a nonresidential setting. These services, limited annually to 936 units, include assessment, education to teach the patient about the diagnosed mental illness and appropriate medications to avoid complication and relapse, opportunities to learn and use independent living skills and to enhance social and interpersonal skills within a supportive and normalizing program structure and environment. One unit of service is defined as a minimum of two but less than four hours on a given day. Two units are defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. Authorization is required for Medicaid reimbursement.

Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. Services are provided to individuals: (i) who without these services would be unable to remain in the community or (ii) who meet at least two of the following criteria on a continuing or intermittent basis:

a. Experience difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of psychiatric hospitalization, homelessness, or isolation from social supports;

b. Experience difficulty in activities of daily living such as maintaining personal hygiene, preparing food and maintaining adequate nutrition, or managing finances to such a degree that health or safety is jeopardized;

c. Exhibit such inappropriate behavior that repeated interventions by the mental health, social services, or judicial system are necessary; or

d. Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or significantly inappropriate social behavior.

3. Crisis intervention shall provide immediate mental health care, available 24 hours a day, seven days per week, to assist individuals who are experiencing acute psychiatric dysfunction requiring immediate clinical attention. This service's objectives shall be to prevent exacerbation of a condition, to prevent injury to the client or others, and to provide treatment in the context of the least restrictive setting. Crisis intervention activities shall include assessing the crisis situation, providing short-term counseling designed to stabilize the individual, providing access to further immediate assessment and follow-up, and linking the individual and family with ongoing care to prevent future crises. Crisis intervention services may include office visits, home visits, preadmission screenings, telephone contacts, and other client-related activities for the prevention of institutionalization.

a. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from an acute crisis of a psychiatric nature that puts the individual at risk of psychiatric hospitalization. Individuals must meet at least two of the following criteria at the time of admission to the service:

(1) Experience difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of psychiatric hospitalization, homelessness, or isolation from social supports;

(2) Experience difficulty in activities of daily living such as maintaining personal hygiene, preparing food and maintaining adequate nutrition, or managing finances to such a degree that health or safety is jeopardized;

(3) Exhibit such inappropriate behavior that immediate interventions by mental health, social services, or the judicial system are necessary; or

(4) Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or significantly inappropriate social behavior.

b. The annual limit for crisis intervention is 720 units per year. A unit shall equal 15 minutes.

4. Intensive community treatment (ICT), initially covered for a maximum of 26 weeks based on an initial assessment with continuation reauthorized for an additional 26 weeks annually based on written assessment and certification of need by a qualified mental health provider (QMHP), shall be defined as medical psychotherapy, psychiatric assessment, medication management, and case management activities offered to outpatients outside the clinic, hospital, or office setting for individuals who are best served in the community. The annual unit limit shall be 130 units with a unit equaling one hour. Authorization is required for Medicaid reimbursement. To qualify for ICT, the individual must meet at least one of the following criteria:

a. The individual must be at high risk for psychiatric hospitalization or becoming or remaining homeless due to mental illness or require intervention by the mental health or criminal justice system due to inappropriate social behavior.

b. The individual has a history (three months or more) of a need for intensive mental health treatment or treatment for co-occurring serious mental illness and substance use disorder and demonstrates a resistance to seek out and utilize appropriate treatment options.

(1) An assessment that documents eligibility and the need for this service must be completed prior to the initiation of services. This assessment must be maintained in the individual's records.

(2) A service plan must be initiated at the time of admission and must be fully developed within 30 days of the initiation of services.

5. Crisis stabilization services for nonhospitalized individuals shall provide direct mental health care to individuals experiencing an acute psychiatric crisis which may jeopardize their current community living situation. Authorization may be for up to a 15-day period per crisis episode following a documented face-to-face assessment by a QMHP which is reviewed and approved by an LMHP within 72 hours. The maximum limit on this service is up to eight hours (with a unit being one hour) per day up to 60 days annually. The goals of crisis stabilization programs shall be to avert hospitalization or rehospitalization, provide normative environments with a high assurance of safety and security for crisis intervention, stabilize individuals in psychiatric crisis, and mobilize the resources of the community support system and family members and others for on-going maintenance and rehabilitation. The services must be documented in the individual's records as having been provided consistent with the ISP in order to receive Medicaid reimbursement. The crisis stabilization program shall provide to recipients, as appropriate, psychiatric assessment including medication evaluation, treatment planning, symptom and behavior management, and individual and group counseling. This service may be provided in any of the following settings, but shall not be limited to: (i) the home of a recipient who lives with family or other primary caregiver; (ii) the home of a recipient who lives independently; or (iii) community-based programs licensed by ~~DMHMRSAS~~ DBHDS to provide residential services but which are not institutions for mental disease (IMDs). This service shall not be reimbursed for (i) recipients with medical conditions that require hospital care; (ii) recipients with primary diagnosis of substance

abuse; or (iii) recipients with psychiatric conditions that cannot be managed in the community (i.e., recipients who are of imminent danger to themselves or others). Services must be documented through daily notes and a daily log of times spent in the delivery of services. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from an acute crisis of a psychiatric nature that puts the individual at risk of psychiatric hospitalization. Individuals must meet at least two of the following criteria at the time of admission to the service:

a. Experience difficulty in establishing and maintaining normal interpersonal relationships to such a degree that the individual is at risk of psychiatric hospitalization, homelessness, or isolation from social supports;

b. Experience difficulty in activities of daily living such as maintaining personal hygiene, preparing food and maintaining adequate nutrition, or managing finances to such a degree that health or safety is jeopardized;

c. Exhibit such inappropriate behavior that immediate interventions by the mental health, social services, or judicial system are necessary; or

d. Exhibit difficulty in cognitive ability such that the individual is unable to recognize personal danger or significantly inappropriate social behavior.

6. Mental health support services shall be defined as training and supports to enable individuals to achieve and maintain community stability and independence in the most appropriate, least restrictive environment. Authorization is required for Medicaid reimbursement. These services may be authorized for six consecutive months. This program shall provide the following services in order to be reimbursed by Medicaid: training in or reinforcement of functional skills and appropriate behavior related to the individual's health and safety, activities of daily living, and use of community resources; assistance with medication management; and monitoring health, nutrition, and physical condition.

a. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from a condition due to mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. Services are provided to individuals who without these services would be unable to remain in the community. The individual must have two of the following criteria on a continuing or intermittent basis:

(1) Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that the individual is at risk of psychiatric hospitalization or homelessness or isolation from social supports;

(2) Require help in basic living skills such as maintaining personal hygiene, preparing food and maintaining adequate nutrition or managing finances to such a degree that health or safety is jeopardized;

(3) Exhibit such inappropriate behavior that repeated interventions by the mental health, social services, or judicial system are necessary; or

(4) Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.

b. The individual must demonstrate functional impairments in major life activities. This may include individuals with a dual diagnosis of either mental illness and mental retardation, or mental illness and substance abuse disorder.

c. The yearly limit for mental health support services is 372 units. One unit is one hour but less than three hours.

12VAC30-50-420. Case management services for seriously mentally ill adults and emotionally disturbed children.

A. Target Group: The Medicaid eligible individual shall meet the ~~DMHMRSAS~~ DBHDS definition for "serious mental illness," or "serious emotional disturbance in children and adolescents."

1. An active client for case management shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, service providers, significant others and others including at least one face-to-face contact every 90 days. Billing can be submitted for an active client only for months in which direct or client-related contacts, activity or communications occur. Authorization is required for Medicaid reimbursement.

2. There shall be no maximum service limits for case management services. Case management shall not be billed for individuals who are in institutions for mental disease.

B. Services will be provided to the entire state.

C. Comparability of Services: Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of § 1902(a)(10)(B) of the Act.

D. Definition of Services: Mental health services. Case management services assist individual children and adults, in accessing needed medical, psychiatric, social, educational, vocational, and other supports essential to meeting basic needs. Services to be provided include:

1. Assessment and planning services, to include developing an Individual Service Plan (does not include performing

medical and psychiatric assessment but does include referral for such assessment);

2. Linking the individual to services and supports specified in the individualized service plan;

3. Assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources;

4. Coordinating services and service planning with other agencies and providers involved with the individual~~.~~;

5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills, and use vocational, civic, and recreational services;

6. Making collateral contacts with the individuals' significant others to promote implementation of the service plan and community adjustment;

7. Follow-up and monitoring to assess ongoing progress and to ensure services are delivered; and

8. Education and counseling which guides the client and develops a supportive relationship that promotes the service plan.

E. Qualifications of Providers:

1. Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to limit case management providers for individuals with mental retardation and individuals with serious/chronic mental illness to the Community Services Boards only to enable them to provide services to serious/chronically mentally ill or mentally retarded individuals without regard to the requirements of § 1902(a)(10)(B) of the Act.

2. To qualify as a provider of services through DMAS for rehabilitative mental health case management, the provider of the services must meet certain criteria. These criteria shall be:

a. The provider must have the administrative and financial management capacity to meet state and federal requirements;

b. The provider must have the ability to document and maintain individual case records in accordance with state and federal requirements;

c. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services;

d. The provider must be licensed as a provider of case management services by the ~~DMHMRSAS~~ DBHDS; and

e. Persons providing case management services must have knowledge of:

(1) Services, systems, and programs available in the community including primary health care, support services, eligibility criteria and intake processes, generic community resources, and mental health, mental retardation, and substance abuse treatment programs;

(2) The nature of serious mental illness, mental retardation, and substance abuse depending on the population served, including clinical and developmental issues;

(3) Different types of assessments, including functional assessments, and their uses in service planning;

(4) Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning, and service coordination;

(5) The service planning process and major components of a service plan;

(6) The use of medications in the care or treatment of the population served; and

(7) All applicable federal and state laws, state regulations, and local ordinances.

f. Persons providing case management services must have skills in:

(1) Identifying and documenting an individual's needs for resources, services, and other supports;

(2) Using information from assessments, evaluations, observation, and interviews to develop individual service plans;

(3) Identifying services and resources within the community and established service system to meet the individual's needs; and documenting how resources, services, and natural supports, such as family, can be utilized to achieve an individual's personal habilitative/rehabilitative and life goals; and

(4) Coordinating the provision of services by public and private providers.

g. Persons providing case management services must have abilities to:

(1) Work as team members, maintaining effective inter- and intra-agency working relationships;

(2) Work independently, performing position duties under general supervision; and

(3) Engage and sustain ongoing relationships with individuals receiving services.

3. Providers may bill Medicaid for mental health case management only when the services are provided by qualified mental health case managers.

F. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.

2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

H. Case management services may not be billed concurrently with intensive community treatment services, treatment foster care case management services or intensive in-home services for children and adolescents.

12VAC30-50-430. Case management services for youth at risk of serious emotional disturbance.

A. Target group: Medicaid eligible individuals who meet the ~~DMHMRSAS~~ DBHDS definition of youth at risk of serious emotional disturbance.

1. An active client shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, service providers, significant others and others including at least one face-to-face contact every 90-days. Billing can be submitted for an active client only for months in which direct or client-related contacts, activity or communications occur. Authorization is required for Medicaid reimbursement.

2. There shall be no maximum service limits for case management services. Case management services must not be billed for individuals who are in institutions for mental disease.

B. Services will be provided in the entire state.

C. Comparability of services: Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of § 1902(a)(10)(B) of the Act.

D. Definition of services: Mental health services. Case management services assist youth at risk of serious emotional disturbance in accessing needed medical, psychiatric, social, educational, vocational, and other supports essential to meeting basic needs. Services to be provided include:

1. Assessment and planning services, to include developing an Individual Service Plan;

2. Linking the individual directly to services and supports specified in the treatment/services plan;

3. Assisting the individual directly for the purpose of locating, developing or obtaining needed service and resources;

4. Coordinating services and service planning with other agencies and providers involved with the individual;

5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills, and use vocational, civic, and recreational services;

6. Making collateral contacts which are nontherapy contacts with an individual's significant others to promote treatment and/or community adjustment;

7. Following up and monitoring to assess ongoing progress and ensuring services are delivered; and

8. Education and counseling which guides the client and develops a supportive relationship that promotes the service plan.

E. Qualifications of providers.

1. Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to limit case management providers, to the community services boards only, to enable them to provide services to serious/chronically mentally ill or mentally retarded individuals without regard to the requirements of § 1902(a)(10)(B) of the Act. To qualify as a provider of case management services to youth at risk of serious emotional disturbance, the provider of the services must meet the following criteria:

a. The provider must meet state and federal requirements regarding its capacity for administrative and financial management;

b. The provider must document and maintain individual case records in accordance with state and federal requirements;

c. The provider must provide services in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services;

d. The provider must be licensed as a provider of case management services by the ~~DMHMRSAS~~ DBHDS; and

e. Persons providing case management services must have knowledge of:

(1) Services, systems, and programs available in the community including primary health care, support services, eligibility criteria and intake processes, generic

community resources, and mental health, mental retardation, and substance abuse treatment programs;

(2) The nature of serious mental illness, mental retardation and/or substance abuse depending on the population served, including clinical and developmental issues;

(3) Different types of assessments, including functional assessments, and their uses in service planning;

(4) Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning, and service coordination;

(5) The service planning process and major components of a service plan;

(6) The use of medications in the care or treatment of the population served; and

(7) All applicable federal and state laws, state regulations, and local ordinances.

f. Persons providing case management services must have skills in:

(1) Identifying and documenting an individual's need for resources, services, and other supports;

(2) Using information from assessments, evaluations, observation, and interviews to develop individual service plans;

(3) Identifying services and resources within the community and established service system to meet the individual's needs; and documenting how resources, services, and natural supports, such as family, can be utilized to achieve an individual's personal habilitative/ rehabilitative and life goals; and

(4) Coordinating the provision of services by diverse public and private providers.

g. Persons providing case management services must have abilities to:

(1) Work as team members, maintaining effective inter- and intra-agency working relationships;

(2) Work independently performing position duties under general supervision; and

(3) Engage and sustain ongoing relationships with individuals receiving services.

F. Providers may bill Medicaid for mental health case management to youth at risk of serious emotional disturbance only when the services are provided by qualified mental health case managers.

G. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.

2. Eligible recipients will have free choice of the providers of other medical care under the plan.

H. Payment for case management services under the plan must not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

I. Case management may not be billed concurrently with intensive community treatment services, treatment foster care case management services, or intensive in-home services for children and adolescents.

VA.R. Doc. No. R09-1937; Filed June 17, 2009, 11:34 a.m.

Proposed Regulation

Title of Regulation: **12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-200; adding 12VAC30-80-35).**

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 5 p.m. on September 4, 2009.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, or email brian.mccormick@dmas.virginia.gov.

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: Ambulatory Surgery Centers. This proposed regulation is not essential to protect the health, safety, or welfare of citizens. However, it is necessary to have a reimbursement methodology for DMAS to pay ambulatory surgery centers (ASCs) that furnish services to Medicaid recipients. As a result of Medicare modifying its reimbursement methodology for ASCs, it no longer produces the data that DMAS has relied on for its current methodology. In the absence of this data, DMAS can no longer maintain its

current methodology and, therefore, must develop a new methodology.

Outpatient Rehabilitation Facility Reimbursement. This proposed regulation is also not essential to protect the health, safety, or welfare of citizens. This proposed action modifies the methodology for reimbursing outpatient rehabilitation agencies. This new methodology is similar to the methodology used by Medicare and commercial insurers including Medicaid MCOs.

There are no expected environmental benefits from these changes.

Substance: Ambulatory Surgery Centers. Medicaid currently reimburses ASCs using the Medicare methodology in effect prior to January 1, 2007, by assigning procedure codes to nine ASC groups. The rate for each group in the previous ASC grouper methodology was intended to compensate the ASC for all services performed solely based on the procedure code.

The new APG methodology defines Ambulatory Patient Groups (APGs) as allowed outpatient procedures and ancillary services that reflect similar patient characteristics and resource utilization performed by ASCs. Each group is assigned an APG-relative weight that reflects the relative average cost for each APG compared to the relative cost for all other APGs. The base rate for ASC visits are determined by dividing total reimbursement for ASC services by the total number of visits for ASC services. The total allowable operating rate per visit is determined by multiplying the base rate times the APG relative weight.

To maintain budget neutral expenditures for ASC services and to reduce payment errors, as compared to the current Medicare-based methodology, the base rate is to be adjusted by a budget neutrality factor (BNF) determined every three years. The APG relative weights to be implemented will be the weights determined and published periodically by DMAS. The weights will be updated at least every three years in concert with calculation of the BNF for ASCs. New outpatient procedures and new relative weights are to be added as necessary between the scheduled weight and rate updates. The affected entities will be notified of these changes, as they occur, via agency guidance documents.

Outpatient Rehabilitation Facility Reimbursement. 12VAC30-80-200 is being amended to implement a prospective statewide fee schedule methodology for outpatient rehabilitation agencies based on CPT codes. Rehabilitation services furnished by community services boards and state agencies will continue to be reimbursed on a cost basis. The fee schedule will be developed to achieve savings totaling $185,900 general fund dollars as required in the Governor's budget.

Issues: Ambulatory Surgery Centers. Implementation of APGs will align the DMAS ASC methodology more closely with other ambulatory payment methodologies. This change will increase the efficiency and effectiveness of payments made by DMAS to ASC providers and reduce payment errors.

Outpatient Rehabilitation Facility Reimbursement. Currently, the Virginia Administrative Code contains a cost-based methodology for computing reimbursement for outpatient rehabilitation services that is subject to a ceiling (12VAC30-80-200). For rehabilitation services, Medicare and most commercial insurers use a fee schedule. As a result, outpatient rehabilitation agencies bill differently and submit a cost report only for Medicaid. Implementation of a fee schedule methodology will align the DMAS reimbursement methodology for outpatient rehabilitation services more closely to the Medicare methodology and other reimbursement methodologies used by commercial insurers, including Medicaid's enrolled Managed Care Organizations (MCOs). Providers will no longer have to submit cost reports and DMAS will no longer have to settle the cost reports. Discontinuing both of these activities will result in administrative savings to both rehab providers and the Commonwealth.

There are no disadvantages to the citizens of the Commonwealth for these changes as they are not expected to have an impact on the delivery of these services. The advantage to the citizens of the Commonwealth is the reduction in providers' and agency's costs associated with these changes.

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

Summary of the Proposed Amendments to Regulation. Department of Medical Assistance Services proposes to amend Medicaid reimbursement methodologies for ambulatory surgery centers and outpatient rehabilitation facilities.

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

Estimated Economic Impact. Department of Medical Assistance Services proposes to amend Medicaid reimbursement methodologies for ambulatory surgery centers and outpatient rehabilitation facilities.

The need to amend the Medicaid reimbursement methodology for Ambulatory Surgery Centers (ASC) is prompted by the change in Medicare's reimbursement methodology for the same services. Currently, Medicaid reimbursement methodology depends on the Medicare ASC procedure codes. These codes have no longer been used by Medicare since it changed its methodology on January 1, 2007. Since then Medicare has been producing the procedure codes for Medicaid so it could continue to reimburse these centers until it adopts a new methodology.

The proposed changes will establish a new ASC reimbursement methodology that will no longer depend on the old Medicare procedure codes. The proposed methodology is similar to the new Medicare methodology in that both use Ambulatory Patient Groups (APG) to determine reimbursement, but the Medicaid reimbursement methodology will no longer depend on the Medicare methodology.

According to Department of Medical Assistance Services (DMAS), the new APG methodology defines APGs for outpatient procedures and ancillary services that reflect similar patient characteristics and resource utilization. Each group is assigned an APG relative weight that reflects the relative average cost for each APG compared to the relative cost for all other APGs. The base rate for ASC visits is determined by dividing total reimbursement for ASC services by the total number of visits for ASC services. The total allowable operating rate per visit is determined by multiplying the base rate times the APG relative weight.

This methodology change will be accomplished in a budget neutral manner. To maintain budget neutrality, the base rate will be adjusted by a "budget neutrality factor" that will be recalibrated every three years. Also, the weights will be updated at least every three years to incorporate any changes that may have occurred in relative average costs.

Since this change will be accomplished in a budget neutral manner, there should be no change in the total reimbursements for the ASC services. In Fiscal Year 2008, Medicaid's total reimbursement for ASCs was about $1.6 million. However, it is possible for providers to experience a slight increase or decrease in their reimbursement amounts as a result of the change in methodology.

In addition, while there is likely to be some administrative costs on DMAS to modify its information technology to incorporate this methodology, it will be accomplished by the use of its current funding. Also, the software that facilitates the implementation of new methodology, grouper, is provided to DMAS at no charge. Since the claim reporting requirements stay the same, little or no administrative costs on providers is expected. However, those who may be interested in utilizing the grouper for cash flow management purposes will likely have to purchase it out of pocket.

DMAS also proposes to change its reimbursement methodology for outpatient rehabilitation facilities.[1] According to DMAS, current Medicaid methodology is more than several decades old and is cost based. According to the proposed methodology, DMAS will establish prospective fee schedules based on CPT codes. The proposed methodology is not only superior since its prospective, but also is similar to the methodology used by Medicare and commercial insurers including Medicaid managed care organizations.

The fee schedule will be developed to achieve savings of $371,800 in total funds as required in the Governor's budget. In fiscal year 2008, total reimbursement to outpatient rehabilitation facilities were approximately $5.6 million. Additionally, approximately $48,500 are expected to be realized in administrative cost savings as DMAS will no longer be auditing and settling cost reports. Similar to the other change in methodology, while there is likely to be some administrative costs on DMAS to modify its information technology to incorporate this methodology, it will be accomplished by the use of its current funding.

The main economic impact of this particular change on providers is the loss of $371,800 at the aggregate and the contractionary economic effects associated with reduced spending in the Commonwealth. However, this amount may not be distributed equally over all the providers. Under the proposed methodology, facilities whose costs were higher relative to others stand to see a decrease in their reimbursements and facilities whose costs were lower relative to others stand to see an increase in their reimbursements. Since costs are no longer reimbursed, a significant improvement in production efficiency is expected throughout most if not all facilities. Finally, each of the 100 providers is expected to save approximately $2,000 per year since they will no longer have to prepare cost reports.

Businesses and Entities Affected. The proposed regulations apply to approximately 80 ambulatory surgery centers and 100 outpatient rehabilitation facilities.

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

Projected Impact on Employment. The reduction in reimbursement for outpatient rehab services may decrease labor demand for rehab personnel by the providers. Also, no longer needing cost reports may reduce labor demand for administrative services. However, the net effect on the labor demand will depend on what is done with the savings in rehabilitation reimbursements and administrative savings.

Effects on the Use and Value of Private Property. Reduced reimbursement on outpatient rehab services is somewhat balanced with the savings in administrative costs. The net impact is about $171,000 reduction in lost revenue which could reduce the asset value of the facilities through negative impact on profitability.

Small Businesses: Costs and Other Effects. There is no available information to estimate how many of the 86 centers and 100 facilities may be considered as a small business. If any of them are small businesses however, the costs and other effects on them would be similar to those discussed above.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no known alternative that would minimize the adverse impact on the providers.

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.

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[1] Rehabilitation services furnished by community services boards and state agencies will continue to be reimbursed on a cost basis.

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 Ambulatory Surgery Center and Outpatient Rehabilitation Facility Reimbursement (12VAC30-80-35 and 12VAC30-80-200).

Summary:

The amendments are intended to implement reimbursement changes for ambulatory surgery centers. This action will also implement reimbursement changes for outpatient rehabilitation facilities that are currently reimbursed on a cost basis.

12VAC30-80-35. Fee for service: ambulatory surgery centers.

A. Definitions: The following words and terms when used in this part shall have the following meaning unless the context clearly indicates otherwise:

"Ambulatory Patient Group (APG)" means a defined group of outpatient procedures, encounters, or ancillary services that incorporates International Classification of Disease (ICD) diagnosis codes, Current Procedural Terminology (CPT) codes, and Healthcare Common Procedure Coding System (HCPCS) codes.

"APG relative weight" means the relative expected average costs for each APG divided by the relative expected average costs for visits assigned to all APGs.

B. Effective July 1, 2010, the prospective Ambulatory Patient Group (APG)-based payment system described as follows shall apply to Ambulatory Surgery Center (ASC) services:

1. The operating payments for ASC visits shall be determined on the basis of a base rate per visit times the relative weight of the APG to which the visit is assigned.

2. The APG relative weights shall be the weights determined and published periodically by DMAS. The weights shall be updated at least every three years.

3. The base rate shall be adjusted by the budget neutrality factor (BNF) to ensure that no increase in expenditures occurs as a result of updates to the relative weights. The base period used to adjust the base rate shall be a recent 12-month period prior to the fiscal year that the new base rates will be effective.

4. The operating payment shall represent total allowable amount for a visit including ancillary services.

C. The Ambulatory Patient Group (APG) grouper used in the ASC payment system for ASCs shall be determined by DMAS. Providers or provider representatives shall be given notice prior to implementing a new grouper.

12VAC30-80-200. Prospective reimbursement for rehabilitation agencies.

A. Effective for dates of service on and after July 1, ~~2003~~ 2009, rehabilitation agencies, excluding those operated by community services boards and state agencies, shall be reimbursed a prospective rate equal to the lesser of the agency's ~~cost per visit for each type of rehabilitation service (physical therapy, occupational therapy, and speech therapy) or a statewide ceiling established for each type of service. The prospective ceiling for each type of service shall be equal to 112% of the median cost per visit, for such services, of rehabilitation agencies. The median shall be calculated using a base year to be determined by the department~~ fee schedule amount or billed charges per procedure. The agency shall develop a statewide fee schedule based on CPT codes to reimburse providers what the agency estimates they would have been paid in FY 2010 minus $371,800. ~~Effective July 1, 2003, the median calculated and the resulting ceiling shall be applicable to all services beginning on and after July 1, 2003,~~

~~and all services in provider fiscal years beginning in SFY2004.~~

~~B. In each provider fiscal year, each provider's prospective rate shall be determined based on the cost report from the previous year and the ceiling, calculated by DMAS, that is applicable to the state fiscal year in which the provider fiscal year begins.~~

~~C.~~ B. For providers with fiscal years that do not begin on July 1, ~~2003,~~ 2009, services on or before June 30, 2009, for the fiscal year in progress on that date shall be ~~apportioned between the time period before and the time period after that date based on the number of calendar months before and after that date. Costs apportioned before that date shall~~ be settled based on ~~allowable costs, and those after shall be settled based on the prospective methodology~~ the previous prospective rate methodology and the ceilings in effect for that fiscal year as of June 30, 2009. Providers may choose not to submit a cost report for a partial year. In that case, interim payments for services furnished for dates of service prior to July 2009 shall be considered final.

C. Rehabilitation services furnished by community service boards or state agencies shall be reimbursed costs based on annual cost reporting methodology and procedures.

D. Beginning with state fiscal years beginning on ~~and~~ or after July 1, ~~2004~~ 2010, ~~the ceiling and the provider specific cost per visit~~ rates shall be adjusted annually for inflation~~, from the previous year to the prospective year, using the nursing facility inflation factor published for Virginia by DRI, applicable to the calendar year in progress at the start of the state fiscal year~~ using the Virginia-specific nursing home input price index contracted for by the agency. The agency shall use the percent moving average for the quarter ending at the midpoint of the rate year from the most recently available index prior to the beginning of the rate year.

VA.R. Doc. No. R09-1405; Filed June 17, 2009, 11:35 a.m.

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TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **14VAC5-290. Rules Establishing Standards for Companies Deemed to Be in Hazardous Financial Condition (amending 14VAC5-290-10, 14VAC5-290-20, 14VAC5-290-30, 14VAC5-290-40, 14VAC5-290-50).**

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Public Hearing Information: A public hearing will be scheduled upon request.

Public Comments: Public comments may be submitted until 5 p.m. on July 24, 2009.

Agency Contact: Raquel C. Pino-Moreno, Principal Insurance Analyst, Bureau of Insurance, State Corporation Commission, 1300 East Main Street, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9499, FAX (804) 371-9511, or email raquel.pino-moreno@scc.virginia.gov.

Summary:

The proposed amendments incorporate the revisions made by the National Association of Insurance Commissioners to its Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition, which provides additional tools for state insurance departments to utilize in identifying and dealing with companies in hazardous financial condition, including the authority to issue corrective action orders.

AT RICHMOND, JUNE 16, 2009

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2009-00124

Ex Parte: In the matter of
Adopting Revisions to the Rules
Establishing Standards for Companies
Deemed to be in Hazardous
Financial Condition

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code. A copy may also be found at the Commission's website: http://www.scc.virginia.gov/case.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed revisions to the rules set forth in Chapter 290 of Title 14 of the Virginia Administrative Code entitled "Rules Establishing Standards for Companies Deemed to be in Hazardous Financial Condition" which amend the rules at 14 VAC 5-290-10 through 14 VAC 5-290-50 ("Rules").

The proposed revisions to the regulations are based on the National Association of Insurance Commissioners' adoption in September 2008 of revisions to the Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition.

The Commission is of the opinion that the proposed revisions submitted by the Bureau and set out at 14 VAC 5-290-10 through 14 VAC 5-290-50 should be considered for adoption with an effective date of September 15, 2009.

IT IS THEREFORE ORDERED THAT:

(1) The proposed revisions to "Rules Establishing Standards for Companies Deemed to be in Hazardous Financial Condition," which amend the Rules at 14 VAC 5-290-10 through 14 VAC 5-290-50, be attached and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose the adoption of the proposed revised Rules shall file such comments or hearing request on or before July 24, 2009, in writing, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case No. INS-2009-00124. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: http://www.scc.virginia.gov/case.

(3) If no written request for a hearing on the proposed revised Rules is filed on or before July 24, 2009, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed revisions to the Rules, may adopt the revised Rules as submitted by the Bureau.

(4) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed revisions to the Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations and shall make available this Order and the attached proposed revisions to the Rules on the Commission's website, http://www.scc.virginia.gov/case.

(5) AN ATTESTED COPY hereof, together with a copy of the proposed revised Rules, shall be sent by the Clerk of the Commission to the Bureau, c/o Douglas C. Stolte, Deputy Commissioner, who forthwith shall give further notice of the proposed adoption of the revised Rules by mailing a copy of this Order, together with the proposed revised Rules, to all licensed insurers and certain interested parties designated by the Bureau.

(6) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (5) above.

14VAC5-290-10. Purpose.

The purpose of this chapter ~~(14VAC5-290-10 et seq.)~~ is to set forth the standards ~~which~~ that the ~~Commission~~ commission may use for identifying insurers found to be in such condition as to render the continuance of their business hazardous to their policyholders, creditors, or the general public ~~or to holders of their policies or certificates of insurance~~.

This chapter shall not be interpreted to limit the powers granted the ~~Commission~~ commission by any laws or provisions of any law of this Commonwealth, nor shall this chapter be interpreted to ~~supercede~~ supersede any laws or parts of laws of this Commonwealth.

14VAC5-290-20. Applicability and scope.

This chapter~~, 14VAC5-290-10 et seq.,~~ shall apply to every entity that is licensed, approved, registered, or accredited in Virginia under the provisions of Title 38.2 of the Code of Virginia, and also subject to solvency regulation in this Commonwealth pursuant to the provisions of Title 38.2 of the Code of Virginia. All such entities are hereinafter referred to as "insurer."

14VAC5-290-30. Standards.

The following factors and standards, either singly or a combination of two or more, may be considered in determining whether an insurer's financial condition, method of operation, or manner of doing business in this Commonwealth might be deemed to be hazardous to its policyholders, creditors, or the general public:

1. Adverse findings resulting from any financial condition or market conduct examination conducted pursuant to Article 4 (§ 38.2-1317 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia or any inspection authorized by the general provisions of § 38.2-200, including inspections of financial statements filed pursuant to §§ 38.2-1300, 38.2-1301, 38.2-1316.2, 38.2-1316.3, 38.2-4811, or 38.2-5103 of the Code of Virginia, or reported in any examination or other information submitted pursuant to § 38.2-5103 of the Code of Virginia, or reported in any audit report, and actuarial opinions, reports, or summaries submitted pursuant to §§ 38.2-1315.1 and 38.2-3127.1 of the Code of Virginia;

2. The National Association of Insurance Commissioners' ("NAIC") Insurance Regulatory Information System

("IRIS") and its ~~related~~ other financial analysis solvency tools and reports;

~~3. The ratios of commission expenses, general insurance expenses, policy benefits and reserve increases as to annual premium and net investment income;~~

~~4.~~ 3. The ratio of the annual premium volume to surplus or of liabilities to surplus in relation to loss experience and/or the kinds of risks insured;

~~5.~~ 4. Whether the insurer's asset portfolio when viewed in light of current economic conditions and indications of financial or operation leverage is of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature;

5. Whether the insurer has established reserves and related actuarial items that make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts;

6. The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

7. Whether the insurer's operating loss in the last 12-month period or any shorter period of time, including but not limited to net capital gain or loss, change in nonadmitted assets, and cash dividends paid to shareholders, is greater than 50% of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

8. Whether the insurer's operating loss in the last 12-month period or any shorter period of time, excluding net capital gains, is greater than 20% of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

~~7.~~ 9. Whether the excess of surplus to policyholders over and above an insurer's statutorily required surplus to policyholders has decreased by more than 50% in the preceding ~~12 month~~ 12-month period or any shorter period of time;

~~8. Whether the insurer's current or projected net income is adequate to meet the insurer's present or projected obligations;~~

~~9.~~ 10. The age and collectibility of receivables;

~~10.~~ 11. Whether a reinsurer, obligor, or any ~~affiliate, subsidiary or reinsurer~~ entity within the insurer's insurance holding company system is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations, and which may affect the solvency of the insurer;

~~11.~~ 12. Contingent liabilities, pledges or guaranties ~~which~~ that either individually or collectively involve a total amount that may affect the solvency of the insurer;

~~12.~~ 13. Whether any affiliate of an insurer is delinquent in the transmitting to, or payment of, net premiums or other amounts due to such insurer;

~~13.~~ 14. Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position;

~~14.~~ 15. Whether the management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;

16. Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the commission;

~~15.~~ 17. Whether the management of an insurer either has filed any false or misleading sworn financial statement, or has released any false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;

~~16.~~ 18. Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; ~~or~~

~~17.~~ 19. Whether the ~~company~~ insurer has experienced or will experience in the foreseeable future cash flow and/or liquidity problems~~.~~;

20. Whether management has established reserves and related actuarial values that do not comply with the requirements of Title 38.2 of the Code of Virginia, related rules, regulations, administrative promulgations, and statutory accounting standards, or that are not computed in accordance with presently accepted actuarial standards consistently applied and in accordance with sound actuarial principles and standards of practice;

21. Whether management persistently engages in material under reserving that results in adverse development;

22. Whether transactions among affiliates, subsidiaries, or controlling persons for which the insurer receives assets or

capital gains, or both, do not provide sufficient value, liquidity, or diversity to assure the insurer's ability to meet its outstanding obligations as they mature; or

23. Any other finding determined by the commission to be hazardous to the insurer's policyholders, creditors, or the general public.

14VAC5-290-40. Commission's authority.

A. For purposes of making a determination of an insurer's financial condition, the ~~Commission~~ commission may:

1. Disregard any credit or amount receivable resulting from transactions with a reinsurer ~~which~~ that is insolvent, impaired, or otherwise subject to a delinquency proceeding;

2. Make appropriate adjustments, including disallowance, to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates consistent with the NAIC Accounting Practices and Procedures Manual, state laws, and regulations;

3. Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor;

4. Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12-month period.

B. For all entities subject to the provisions of § 38.2-1038 of the Code of Virginia, the ~~Commission~~ commission may issue an order regarding corrective action when it finds that (i) the insurer cannot, or there is a reasonable expectation that the insurer will not be able to, meet its obligations to all policyholders, or (ii) the insurer's continued operation in this Commonwealth is hazardous to policyholders, creditors, and the general public in this Commonwealth. Such an order may require the insurer, among other things, to undertake one or more of the following steps:

1. Reduce the total amount of present and potential liability for policy benefits by reinsurance;

2. Reduce, suspend, or limit the volume of business being accepted or renewed;

3. Reduce general insurance and commission expenses by specified methods;

4. Increase the insurer's capital and surplus;

5. Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;

6. File reports in a form acceptable to the ~~Commission~~ commission concerning the market value of an insurer's assets;

7. Limit or withdraw from certain investments or discontinue certain investment practices to the extent the ~~Commission~~ commission deems necessary;

8. Document the adequacy of premium rates in relation to the risks insured;

9. File ~~or cause to be filed, as evidence of the insurer's financial and business standing or solvency, one or more of the following reports:~~

~~a. Regular annual statements and interim financial reports,~~

~~b. Certified audited financial reports,~~

~~c. Actuarial opinions of reserves, including actuarial analyses of the reserves and the assets supporting such reserves, and~~

~~d. Any~~ , in addition to regular annual statements, interim financial reports on the form adopted by the NAIC or in such format as promulgated by the commission or any other analyses of the insurer's data necessary to secure complete information concerning the condition and affairs of the insurer~~.~~ ;

10. Correct corporate governance practice deficiencies, and adopt and utilize governance practices acceptable to the commission;

11. Provide a business plan to the commission in order to continue to transact business in this Commonwealth; or

12. Notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments, adjust rates for any nonlife insurance product written by the insurer that the commission considers necessary to improve the financial condition of the insurer.

14VAC5-290-50. Severability.

If any provision in this chapter~~, 14VAC5-290-10 et seq.,~~ or the application thereof to any person or circumstance is ~~held~~ for any reason held to be invalid, the remainder of the ~~provisions in this~~ chapter~~, 14VAC5-290-10 et seq.,~~ and the application of the provision to other persons or circumstances shall not be affected thereby.

VA.R. Doc. No. R09-1946; Filed June 16, 2009, 3:08 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING

Fast-Track Regulation

Title of Regulation: **18VAC90-20. Regulations Governing the Practice of Nursing (amending 18VAC90-20-200).**

Statutory Authority: §§ 54.1-2400 and 54.1-3005 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 August 5, 2009.

Effective Date: December 31, 2009.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Nursing the authority to promulgate regulations to administer the regulatory system. Specific regulatory authority for the powers and duties of the Board of Nursing is found in § 54.1-3005.

Purpose: The purpose of the proposed regulatory action is to provide an exception to the requirement for 500 clinical hours in a registered nurse educational program and 400 hours in a licensed practical nurse educational program for nurses who are licensed in another state or D.C. and have been engaged in clinical practice with an active, unencumbered license for at least 960 hours (or approximately six months). Currently, an applicant for licensure by endorsement who graduated from a nursing program without the required number of clinical hours would not qualify for licensure in Virginia. The result could be a loss in the number of nurses licensed by endorsement, which would have a negative impact on the availability of nurses in critical care, long-term care, and other health care settings and could exacerbate the workforce shortage. By requiring a minimum number of clinical hours of practice, there is some assurance that the nurse has adequate clinical skills to provide safe care to patients in Virginia.

The board has issued a guidance document that allows licensure until December 31, 2009, for applicants who do not have sufficient supervised clinical hours, but the board needs to have an amendment to regulations in effect by that date to be able to license such applicants by endorsement.

Rationale for Using Fast-Track Process: The issue of licensure for applicants who do not have sufficient clinical hours in an educational program has been continually discussed since the promulgation of regulations establishing a clinical hourly requirement (which became effective April 2, 2008). The board extended implementation or enforcement of that provision for applicants for licensure until December 31, 2009. The delay will allow students in programs without a sufficient number of clinical hours to complete their educational programs or to transfer to programs that meet the board's requirements.

However, the board needs to resolve the dilemma of insufficient clinical hours for other nurses who are now licensed and practicing in another state and may want to come to Virginia after the December 31 deadline. The exception proposed for 18VAC90-20-200 will resolve the issue for anyone who has demonstrated a minimum of clinical skills through at least 960 hours of practice.

Since the action is less restrictive and will allow more nurses to qualify for licensure, it is not expected to be controversial.

Substance: 18VAC90-20-200 is amended to allow the licensure of registered nurses and licensed practical nurses who graduated from approved nursing education programs that did not have the requisite number of clinical hours to be licensed in Virginia provided they hold a current, unrestricted license in another U.S. jurisdiction and can provide evidence of at least 960 hours of clinical practice.

Issues: The primary advantage to the public is the continued availability of nurses being licensed by endorsement with the assurance that they have safely engaged in clinical practice in another U.S. jurisdiction. There are no disadvantages.

The primary advantage to the agency is the partial resolution by regulatory action of an issue that has been troublesome for one distance learning program, whose students may qualify for licensure by endorsement.

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

Summary of the Proposed Amendments to Regulation. The Board of Nursing (Board) proposes to amend its Regulations Governing the Practice of Nursing to allow nurses who are applying for licensure by endorsement to use clinical hours accrued after licensure in another U.S. jurisdiction to meet Board licensure requirements.

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

Estimated Economic Impact. Currently, nurses who have been licensed by examination in another U.S. jurisdiction may apply for licensure by endorsement in Virginia so long as they satisfy all requirements for initial licensure set by the Board. Currently, candidates for initial licensure by the Board must have completed an educational program that includes 400 hours of clinical experience for practical nurses and 500 hours of clinical experience for registered nurses. The Board proposes to amend the rules to allow individuals who did not graduate from a program that included the requisite clinical

hours to apply for licensure by endorsement so long as they have accrued at least 960 hours of post-licensure clinical experience and have an active, unencumbered license in another U.S. jurisdiction.

This change will likely benefit nurses who are licensed in other jurisdictions as it will allow a greater number of them to qualify for licensure by endorsement in Virginia. If this change increases the number of nurses who apply for licensure in the Commonwealth, facilities that employ nurses and patients may also benefit. Facilities will benefit from having a larger pool of nurses from which to hire their employees. Patients may benefit if this change eases the nursing shortage that likely has had an adverse impact on patient care.

Businesses and Entities Affected. The Department of Health Professions (DHP) reports that the Board currently licenses 5,200 registered nurses and 784 licensed practical nurses. This change will affect any nurses who currently do not qualify for licensure by endorsement but will qualify under these proposed regulations.

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

Projected Impact on Employment. This regulatory action may increase the number of individuals who are employed as nurses in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have no substantial effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

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

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Nursing concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18VAC90-20, Regulations Governing the Practice of Nursing.

Summary:

The board has amended regulations for the licensure of registered nurses and licensed practical nurses to allow applicants who graduated from approved nursing education programs that did not have the requisite number of clinical hours to be licensed by endorsement provided the applicant holds a current, unrestricted license in another U.S. jurisdiction and can provide evidence of at least 960 hours of clinical practice.

18VAC90-20-200. Licensure by endorsement.

A. A graduate of an approved nursing education program who has been licensed by examination in another U.S. jurisdiction and whose license is in good standing, or is eligible for reinstatement, if lapsed, shall be eligible for licensure by endorsement in Virginia, provided the applicant satisfies the same requirements for registered nurse or practical nurse licensure as those seeking initial licensure in Virginia. Applicants who have graduated from approved nursing education programs that did not require a sufficient number of clinical hours, as specified in 18VAC90-20-120, may qualify for licensure if they can provide evidence of at least 960 hours of clinical practice with an active, unencumbered license in another U.S. jurisdiction.

1. A graduate of a nursing school in Canada where English was the primary language shall be eligible for licensure by endorsement provided the applicant has passed the Canadian Registered Nurses Examination (CRNE) and holds an unrestricted license in Canada.

2. An applicant for licensure by endorsement who has not passed NCLEX may only be issued a single state license to practice in Virginia.

B. An applicant for licensure by endorsement who has submitted the required application and fee and submitted the

required form to the appropriate credentialing agency for verification of licensure may practice for 30 days upon receipt of an authorization letter from the board. If an applicant has not received a Virginia license within 30 days and wishes to continue practice, he shall seek an extension of authorization to practice by submitting a request and evidence that he has requested verification of licensure.

C. If the application is not completed within one year of the initial filing date, the applicant shall submit a new application and fee.

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

FORMS (18VAC90-20)

Application for Licensure by Endorsement -- Registered Nurse (rev. 1/08).

Instructions for Licensure by Endorsement -- Registered Nurse (rev. ~~1/08)~~ 6/09).

Instructions for Licensure by Endorsement -- Licensed Practical Nurse (rev. ~~1/08)~~ 6/09).

Application for Licensure by Endorsement -- Licensed Practical Nurse (rev. 1/08).

Instructions for Filing Application for Licensure by Examination for Registered Nurses (rev. 7/07).

Application for Licensure by Examination -- Registered Nurse (rev. 7/07).

Instructions for Filing Application for Licensure by Examination for Practical Nurses (rev. 7/07).

Application for Licensure by Examination -- Licensed Practical Nurse (rev. 7/07).

Instructions for Filing Application for Licensure by Repeat Examination for Registered Nurses (rev. 8/08).

Application for Licensure by Repeat Examination for Registered Nurse (rev. 7/07).

Instructions for Filing Application for Licensure by Repeat Examination for Practical Nurses (rev. 8/08).

Application for Licensure by Repeat Examination for Licensed Practical Nurse (rev. 7/07).

Instructions for Filing Application for Licensure by Examination for Licensed Practical Nurses Educated in Other Countries (rev. 7/07).

Application for Licensure by Examination for Licensed Practical Nurses Educated in Other Countries (rev. 7/07).

Instructions for Filing Application for Licensure by Examination for Registered Nurses Educated in Other Countries (rev. 7/07).

Application for Licensure by Examination for Registered Nurses Educated in Other Countries (rev. 7/07).

Temporary Exemption to Licensure (rev. 7/07).

Instructions for Application for Reinstatement -- Registered Nurse (rev. 7/07).

Application for Reinstatement -- Registered Nurse (rev. 7/07).

Instructions for Application for Reinstatement -- Licensed Practical Nurse (rev. 7/07).

Application for Reinstatement of License as a Licensed Practical Nurse (rev. 7/07).

Instructions for Application for Reinstatement Following Suspension or Revocation -- Registered Nurse (rev. 7/07).

Application for Reinstatement of License as a Registered Nurse Following Suspension or Revocation (rev. 7/07).

Instructions for Application for Reinstatement Following Suspension or Revocation -- Licensed Practical Nurse (rev. 7/07).

Application for Reinstatement of License as a Licensed Practical Nurse Following Suspension or Revocation (rev. 7/07).

License Verification Form (rev. 1/08).

Application for Registration as a Clinical Nurse Specialist (rev. 7/07).

Procedure for Registration as a Clinical Nurse Specialist (rev. 7/07).

Survey Visit Report (rev. 7/07).

Application for Registration for Volunteer Practice (rev. 7/07).

Sponsor Certification for Volunteer Registration (rev. 8/08).

VA.R. Doc. No. R09-1806; Filed June 17, 2009, 10:50 a.m.

BOARD OF COUNSELING

Final Regulation

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

Titles of Regulations: **18VAC115-20. Regulations Governing the Practice of Professional Counseling (amending 18VAC115-20-100).**

18VAC115-30. Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling (amending 18VAC115-30-110).

18VAC115-40. Regulations Governing the Certification of Rehabilitation Providers (amending 18VAC115-40-38).

18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy (amending 18VAC115-50-90).

18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (amending 18VAC115-60-110).

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

Effective Date: August 5, 2009.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4488, FAX (804) 527-4435, or email evelyn.brown@dhp.virginia.gov.

Summary:

In compliance with Chapter 687 of the 2009 Acts of Assembly, the Board of Counseling has amended its regulations relating to the responsibility of the licensee or registrant to provide current addresses. Every licensee and registrant is required to provide an address of record for use by the board, and is permitted to provide a second address to be used as the public address. If a second address is not provided, the address of record becomes the public address. Regulations are amended to use the statutory terminology of address of record and to clarify that the regulant has a responsibility to notify the board within 30 days if there is a change in the address of record or the public address, if different from the address of record.

Part IV
Licensure Renewal; Reinstatement

18VAC115-20-100. Annual renewal of licensure.

A. All licensees shall renew licenses on or before June 30 of each year.

B. Beginning with the 2005 renewal, every license holder who intends to continue an active practice shall submit to the board on or before June 30 of each year:

1. A completed application for renewal of the license on which the licensee attests to compliance with the continuing competency requirements prescribed in this chapter; and

2. The renewal fee prescribed in 18VAC115-20-20.

C. A licensee who wishes to place his license in an inactive status may do so upon payment of the inactive renewal fee as established in 18VAC115-20-20. No person shall practice counseling in Virginia unless he holds a current active license. A licensee who has placed himself in inactive status may become active by fulfilling the reactivation requirements set forth in 18VAC115-20-110 C.

D. Licensees shall notify the board of a change ~~of~~ in the address of record or the public address, if different from the address of record within 60 days. Failure to receive a renewal notice from the board shall not relieve the license holder from the renewal requirement.

Part IV
Renewal and Reinstatement

18VAC115-30-110. Annual renewal of certificate.

A. Every certificate issued by the board shall expire on June 30 of each year.

B. Along with the renewal application, the certified substance abuse counselor or certified substance abuse counseling assistant shall submit the renewal fee prescribed in 18VAC115-30-30.

C. Certified individuals shall notify the board of a change ~~of~~ in the address of record or the public address, if different from the address of record within 60 days. Failure to receive a renewal notice and application forms shall not excuse the certified substance abuse counselor from the renewal requirement.

18VAC115-40-38. Change of address.

A certified rehabilitation provider whose ~~mailing~~ address of record or public address, if different from the address of record, has changed shall submit the new address in writing to the board within 30 days of such change.

18VAC115-50-90. Annual renewal of license.

A. All licensees shall renew licenses on or before June 30 of each year.

B. Beginning with the 2005 renewal, all licensees who intend to continue an active practice shall submit to the board on or before June 30 of each year:

1. A completed application for renewal of the license on which the licensee attests to compliance with the continuing competency requirements prescribed in this chapter; and

2. The renewal fee prescribed in 18VAC115-50-20.

C. A licensee who wishes to place his license in an inactive status may do so upon payment of the inactive renewal fee as established in 18VAC115-50-20. No person shall practice marriage and family therapy in Virginia unless he holds a current active license. A licensee who has placed himself in

inactive status may become active by fulfilling the reactivation requirements set forth in 18VAC115-50-100 C.

D. Licensees shall notify the board of a change ~~of~~ in the address of record or the public address, if different from the address of record within 60 days. Failure to receive a renewal notice from the board shall not relieve the license holder from the renewal requirement.

Part IV
Licensure Renewal; Reinstatement

18VAC115-60-110. Renewal of licensure.

A. All licensees shall renew licenses on or before June 30 of each year.

B. Beginning with the 2005 renewal, every license holder who intends to continue an active practice shall submit to the board on or before June 30 of each year:

1. A completed application for renewal of the license on which the licensee attests to compliance with the continuing competency requirements prescribed in this chapter; and

2. The renewal fee prescribed in 18VAC115-60-20.

C. A licensee who wishes to place his license in an inactive status may do so upon payment of the inactive renewal fee as established in 18VAC115-60-20. No person shall practice substance abuse treatment in Virginia unless he holds a current active license. A licensee who has placed himself in inactive status may become active by fulfilling the reactivation requirements set forth in 18VAC115-60-120 C.

D. Licensees shall notify the board of a change ~~of~~ in the address of record or the public address, if different from the address of record within 60 days. Failure to receive a renewal notice from the board shall not relieve the license holder from the renewal requirement.

VA.R. Doc. No. R09-1976; Filed June 17, 2009, 10:50 a.m.

TITLE 21. SECURITIES AND RETAIL FRANCHISING

STATE CORPORATION COMMISSION

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Final Regulation

Titles of Regulations: **21VAC5-10. General Administration - Securities Act (amending 21VAC5-10-40).**

21VAC5-20. Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer (amending 21VAC5-20-60, 21VAC5-20-70, 21VAC5-20-90, 21VAC5-20-130, 21VAC5-20-150, 21VAC5-20-160; adding 21VAC5-20-135).

21VAC5-30. Securities Registration (amending 21VAC5-30-80).

21VAC5-40. Exempt Securities (amending 21VAC5-40-30).

21VAC5-45. Federal Covered Securities (amending 21VAC5-45-20).

21VAC5-80. Investment Advisors (amending 21VAC5-80-10, 21VAC5-80-70, 21VAC5-80-110, 21VAC5-80-130, 21VAC5-80-160; adding 21VAC5-80-145; repealing 21VAC5-80-140).

Statutory Authority: §§ 12.1-13 and 13.1-523 of the Code of Virginia.

Effective Date: July 1, 2009.

Agency Contact: Al Hughes, Registration Chief, State Corporation Commission, Securities Division, Tyler Building, 9th Floor, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9415, FAX (804) 371-9912, or email al.hughes@scc.virginia.gov.

Summary:

The amendments (i) adopt by reference recent changes to certain North American Securities Administrators Association, Inc. (NASAA) securities registration statements of policy; (ii) adopt by reference the NASAA Corporate Securities Definitions statement of policy; (iii) make changes to the notice filing requirements for offerings conducted pursuant to Rules 505 and 506 of Federal Regulation D; (iv) expand the definition of National Association of Securities Dealers, Inc. (NASD) to reflect its current name; (v) correct language for mergers and consolidations; (vi) eliminate the duplicative requirement to take the Series 7 exam and allow the Series 66 exam to qualify an individual as an agent; (vii) require individuals whose agent registration has lapsed for more than two years to requalify; (viii) provide relief for those individuals registered as agents or representatives with an entity that ceases to do business by allowing the individuals to make a termination request directly to the commission; (ix) allow retiring agents to continue to receive commissions without registration; (x) require additional documents be filed as part of the initial investment advisor application process, which will assist new investment advisors in setting up required records and increase protection for the investing public; (xi) require

that all principals of investment advisors meet minimum qualification standards; (xii) clarify that all investment advisor representatives shall meet minimum standards; (xiii) adopt NASAA Custody rule; and (xiv) require investment advisors to develop a disaster recovery plan.

In accordance with public comments, amendments were made to the proposed regulation. The conditions of continuing commission by retiring agents in 21VAC5-20-135 are changed from a five-year requirement to a three-year requirement. The term "or legal beneficiary" is added to 21VAC5-80-145 to further clarify the term "beneficial owner." Language is added to 21VAC5-80-160 to further clarify fiduciary responsibilities.

AT RICHMOND, JUNE 15, 2009

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. SEC-2009-00022

Ex Parte: In the matter of
Adopting a Revision to the Rules
Governing the Virginia Securities Act

ORDER ADOPTING AMENDED RULES

By Order to Take Notice entered on April 7, 2009, all interested persons were ordered to take notice that the State Corporation Commission ("Commission") would consider the adoption of a revision to Chapters 10, 20, 30, 40, 45 and 80 of Title 21 of the Virginia Administrative Code ("Regulations") entitled "Rules and Forms Governing Virginia Securities Act." On April 20, 2009, the Division of Securities and Retail Franchising ("Division") mailed the Order to Take Notice of proposed amendments to the Regulations to all registrants and applicants as of April 9, 2009, and to all interested parties pursuant to the Virginia Securities Act, § 13.1-501 et seq. of the Code of Virginia. The Order to Take Notice described the proposed amendments and afforded interested parties an opportunity to file comments and request a hearing by May 15, 2009, with the Clerk of the Commission ("Clerk").[1] The Commission also required the proposed amendments to be sent to the Registrar of Publications for publication in the Virginia Register of Regulations. In addition, the Order to Take Notice directed the Division to file a response to any comments by May 27, 2009, with the Clerk. Comments were filed with the Clerk by the Securities Industry and Financial Markets Association ("SIFMA") and Shawbrook. The Division filed its response to these comments on May 27, 2009. The Division's response was also posted on the Commission's website and the Division's website. No hearing was requested.

SIFMA commented that the proposed revisions to conditions numbered 1, 3 and 5 of proposed Rule 21 VAC 5-20-135 should be modified from a five-year requirement to a three-year requirement so as to conform to the U.S. Securities and Exchange Commission's ("SEC") position on the matter. Additionally, SIFMA commented that conditions numbered 6, 7 and 9 governing annual certification requirements of Rule 21 VAC 5-20-135 appeared duplicative and should be modified. As a result of the comment, the Division recommended the modification of the conditions numbered 1, 3 and 5 and the amendment of proposed Rule 21 VAC 5-20-135 from a five-year requirement to a three-year requirement. Additionally, the Division recommended the elimination of condition number 6 to Rule 21 VAC 5-20-135. According to the Division, all other proposed revisions to Rule 21 VAC 5-20-135 should remain unchanged.

Shawbrook requested modifications to Rule 21 VAC 5-80-145 and Rule 21 VAC 5-80-160. Specifically, Shawbrook commented that subsection C. 5. a. of Rule 21 VAC 5-80-145 did not provide an adequate definition of "beneficial owner." As a result of the comment, the Division proposed the following modification to subsection C. 5. a. of Rule 21 VAC 5-80-145:

The beneficial owner of the trust is a parent, a grandparent, a spouse, a sibling, a child, or a grandchild, or the legal beneficiary of the trustee. These relationships shall include "step" relationships.

According to the Division, all other modifications to the Rule suggested by Shawbrook were not necessary at this time, and the proposed revisions to Rule 21 VAC 5-80-145 should remain unchanged.

Additionally, Shawbrook commented on Rule 21 VAC 5-80-160 F. 1 and 3 regarding the continuing obligations of an investment advisor's backup disaster plan upon an investment advisor's death or from the incapacity of key advisory persons. As a result of the comment, the Division recommended additional language to further clarify fiduciary responsibilities under Rule 21 VAC 5-80-160 F. 1 and 3. According to the Division, all other modifications suggested by Shawbrook were not necessary at this time, and the other proposed revisions to Rule 21 VAC 5-80-160 should remain unchanged.

The Commission, upon consideration of the proposed amendments to the Regulations, as modified in accordance with the recommendation of the Division, and the record in this case, finds that the proposed amendments to the Regulations, as modified, should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The proposed amended Regulations, as modified, are attached hereto, made a part hereof, and are hereby ADOPTED effective July 1, 2009. Rule 21 VAC 5-80-140 is hereby repealed.

(2) This matter is dismissed from the Commission's docket, and the papers herein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Geoffrey F. Foise, Investments Manager, Shawbrook, 812 West Timber Branch Parkway, Alexandria, Virginia 22302-3620; Nancy Donohoe Lancia, Managing Director of State Government Affairs, SIFMA, 120 Broadway, 35th Floor, New York, New York 10271-0080; and the Commission's Office of General Counsel and the Division of Securities and Retail Franchising.

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[1] The Order to Take Notice mistakenly referenced a different case number (SEC-2008-00026) in Ordering Paragraph (2). By Order dated May 5, 2009, the Commission corrected Ordering Paragraph (2) of the Order to Take Notice to reference Case No. SEC-2009-00022. The Commission also directed the Clerk to file a copy of any correspondence referencing Case No. SEC-2008-00026, and filed subsequent to April 7, 2009, with papers in Case No. SEC-2009-00022.

21VAC5-10-40. Definitions.

As used in this chapter, the following regulations and forms pertaining to securities, instructions and orders of the commission, the following meanings shall apply:

"Act" means the Securities Act contained in Chapter 5 (§ 13.1-501 et seq.) of Title 13.1 of the Code of Virginia.

"Applicant" means a person on whose behalf an application for registration or a registration statement is filed.

"Application" means all information required by the forms prescribed by the commission as well as any additional information required by the commission and any required fees.

"Bank Holding Company Act of 1956" (12 USC § 1841 et seq.) means the federal statute of that name as now or hereafter amended.

"Boiler room tactics" mean operations or high pressure tactics utilized in connection with the promotion of speculative offerings by means of an intensive telephone campaign or unsolicited calls to persons not known by or having an account with the salesmen or broker-dealer represented by him, whereby the prospective purchaser is encouraged to make a hasty decision to invest, irrespective of his investment needs and objectives.

"Breakpoint" means the dollar level of investment necessary to qualify a purchaser for a discounted sales charge on a quantity purchase of open-end management company shares.

"Commission" means State Corporation Commission.

"Federal covered advisor" means any person who is registered or required to be registered under § 203 of the Investment Advisers Act of 1940 as an "investment adviser."

"Investment Advisers Act of 1940" (15 USC § 80b-1 et seq.) means the federal statute of that name as now or hereafter amended.

Notwithstanding the definition in § 13.1-501 of the Act, "investment advisor representative" as applied to a federal covered advisor only includes an individual who has a "place of business" (as that term is defined in rules or regulations promulgated by the SEC) in this Commonwealth and who either:

1. Is an "investment advisor representative" as that term is defined in rules or regulations promulgated by the SEC; or

2. a. Is not a "supervised person" as that term is defined in the Investment Advisers Act of 1940; and

b. Solicits, offers or negotiates for the sale of or sells investment advisory services on behalf of a federal covered advisor.

"Investment Company Act of 1940" (15 USC § 80a-1 et seq.) means the federal statute of that name as now or hereafter amended.

"NASAA" means the North American Securities Administrators Association, Inc.

"NASD" means the National Association of Securities Dealers, Inc., or its successor, the Financial Industry Regulatory Authority, Inc. (FINRA).

"Notice" or "notice filing" means, with respect to a federal covered advisor or federal covered security, all information required by the regulations and forms prescribed by the commission and any required fee.

"Registrant" means an applicant for whom a registration or registration statement has been granted or declared effective by the commission.

"SEC" means the United States Securities and Exchange Commission.

"Securities Act of 1933" (15 USC § 77a et seq.) means the federal statute of that name as now or hereafter amended.

"Securities Exchange Act of 1934" (15 USC § 78a et seq.) means the federal statute of that name as now or hereafter amended.

21VAC5-20-60. [~~Broker-Dealer~~ Broker-dealer] merger or consolidation.

A. When there is a merger or consolidation of two or more registrants, or the reorganization of a registrant, the surviving or new ~~corporation~~ entity shall amend or file, as the case may be, Form BD (the filing of Form BD requires the payment of a $200 fee) and shall file a copy of the following with the commission at its Division of Securities and Retail Franchising upon its request:

1. The certificate of merger or consolidation.

2. The plan of merger or consolidation.

3. The amended or new charter and by-laws.

4. Any document of explanation.

5. The current financial statements of the surviving or new ~~corporation~~ entity and surety bond, if necessary.

B. Such amendment and/or filing shall be made immediately after the merger or consolidation becomes effective, except that the required financial statements shall be filed within 30 calendar days of the effective date of the merger or consolidation. The registration of the surviving or new ~~corporation~~ entity usually will be granted by the commission on the same date that the merger or consolidation becomes effective. Each agent of the nonsurviving or new ~~corporation~~ entity shall comply with 21VAC5-20-90 before registration as an agent with his new employer becomes effective. Every other agent of the defunct corporation shall comply with 21VAC5-20-90 or 21VAC5-20-130, whichever may be applicable.

21VAC5-20-70. Examinations/qualifications.

A. Broker-dealers registered with the commission that are registered pursuant to § 15 of the Securities Exchange Act of 1934 (15 USC § 78o).

1. All principals of an applicant for registration as a broker-dealer must provide the commission with evidence of passing: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66~~, and the General Securities Representative Examination, Series 7~~; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates within the two-year period immediately preceding the date of the application.

2. In lieu of meeting the examination requirement described in subdivision 1 of this subsection [~~A~~], at least two principals of an applicant may provide evidence of having passed the General Securities Principal Qualification Exam (Series 24) or [~~,~~] ~~in the case of a broker-dealer selling investment company securities only,~~ at least two principals of an applicant may provide evidence of having passed the ~~Investment Company and Variable Contracts Products Principal Exam (Series 26) or a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates~~ Qualification Examination for Principals appropriate to the category of registration as specified by the type of business conducted by the broker-dealer within the two-year period immediately preceding the date of the applications.

Any individual who has been registered in any state jurisdiction as a principal within the two-year period immediately preceding the date of the filing of an application shall not be required to comply with the examination requirements of this section.

For the purposes of this subsection [~~A~~], the term "principal" means any person associated with a broker-dealer who is engaged directly (i) in the management, direction or supervision on a regular or continuous basis on behalf of such broker-dealer of the following activities: sales, training, research, investment advice, underwriting, private placements, advertising, public relations, trading, maintenance of books or records, financial operations; or (ii) in the training of persons associated with such broker-dealer for the management, direction, or supervision on a regular or continuous basis of any such activities.

3. [~~Subsection A of this section~~ This subsection] is applicable only to principals of broker-dealers that are, or intend to forthwith become, registered pursuant to § 15 of the federal Securities Exchange Act of 1934.

B. Broker-dealers registered with the commission that are not registered pursuant to § 15 of the federal Securities Exchange Act of 1934.

1. All principals of an applicant for registration as a broker-dealer must provide the commission with evidence of passing:

a. The Uniform Securities Agent State Law Examination, Series 63; the Uniform Combined State Law Examination, Series 66~~, and the General Securities Representative Examination, Series 7~~; or a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates within the two-year period immediately preceding the date of the application; ~~and~~

b. Any additional securities-related examination that the commission deems appropriate in light of the business in which the applicant proposes to engage~~.~~; and

c. Any individual who has been registered in any state jurisdiction as a principal within the two-year period immediately preceding the date of the filing of an application shall not be required to comply with the examination requirements of this section.

2. This subsection is applicable only to principals of broker-dealers that are not, or do not intend to forthwith become, registered pursuant to § 15 of the federal Securities Exchange Act of 1934.

Part II
Broker-Dealer Agents

21VAC5-20-90. Application for registration as a broker-dealer agent.

A. Application for registration as an agent of a NASD member shall be filed on and in compliance with all requirements of the NASAA/NASD Central Registration Depository system and in full compliance with the forms and regulations prescribed by the commission. The application shall include all information required by such forms.

An application shall be deemed incomplete for purposes of applying for registration as a broker-dealer agent unless the following executed forms, fee and information are submitted:

1. Form U-4.

2. The statutory fee in the amount of $30. The check must be made payable to the NASD.

3. Evidence in the form of a NASD exam report of passing within the two-year period immediately preceding the date of the application: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66~~, and the General Securities Representative Examination, Series 7~~; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

4. Any other information the commission may require.

B. Application for registration for all other broker-dealer agents shall be filed on and in compliance with all requirements and forms prescribed by the commission.

An application shall be deemed incomplete for purposes of applying for registration as a broker-dealer agent unless the following executed forms, fee and information are submitted:

1. Form U-4.

2. The statutory fee in the amount of $30. The check must be made payable to the Treasurer of Virginia.

3. Evidence in the form of a NASD exam report of passing within the two-year period immediately preceding the date of the application: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66~~, and the General Securities Representative Examination, Series 7~~; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

4. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21VAC5-20-130. Termination of registration.

A. When a broker-dealer agent terminates a connection with a broker-dealer, or a broker-dealer terminates connection with an agent, the broker-dealer shall file notice of such termination on Form U-5 within 30 calendar days of the date of termination. All filings shall be made with the NASAA/NASD Central Registration Depository system for agents of NASD member firms or with the commission for all other broker-dealer agents.

B. If an agent learns that the broker-dealer has not filed the notice, the agent may file notice with the commission at its Division of Securities and Retail Franchising. The commission may terminate the agent's registration if the commission determines that a broker-dealer (i) is no longer in existence, (ii) has ceased conducting securities business, or (iii) cannot reasonably be located.

21VAC5-20-135. Continuing commission by retiring agents.

The payment of compensation to a registered agent after he terminates his employment with a registered broker-dealer either by retirement, disability, death, or payment to his surviving spouse or other beneficiaries, will not be deemed to be a violation of commission regulations, provided the broker-dealer enters into a bona fide contract with either the retiring agent or the surviving spouse or beneficiaries, and the following conditions are met.

1. The retiring agent must have been continuously employed by or otherwise associated with the firm for a minimum of [~~five~~ three] years, as of the date of his retirement.

2. The sharing of commissions will be limited to commissions derived from accounts held for continuing customers of the retiring agent regardless of whether customer funds or securities are added to the accounts during the period after retirement.

3. The retiring agent must have demonstrated that he conducted himself in a manner exhibiting appropriate professional conduct. At a minimum, retirees must have been subject to no more than a low incidence of investment-related customer complaints and arbitrations settled or decided for more than $25,000 in the [~~five~~ three] years prior to the retirement date.

4. If the retiring agent has been subject to such complaints, the firm must have determined that the complaints did not require disciplinary action or heightened supervision, and that the retiree was not at fault for improper sales practices.

5. The retiring agent must not have been subject to a statutory disqualification during the [~~five~~ three] years prior to retirement.

6. The retiring agent must comply, to the extent applicable, with federal and state securities statutes and regulations, all policies, procedures, and rules of relevant regulatory and self-regulatory bodies, and must certify compliance with the policy at least annually.

7. The broker-dealer must establish parameters for a reasonable time period, not to exceed five years, following retirement and a percentage scale (that is either fixed or decreases the percentage the retiring agent receives each year) regarding the sharing of commissions by the retiring agent and the receiving registered agent.

8. The retiring agent must certify at least annually to the broker-dealer that he has adhered to the requirements and conditions of the agreement.

9. The broker-dealer must contact a representative sample of the account holders including a significant set of high grossing customer accounts subject to the agreement at least annually to confirm that the retiring agent has not provided investment advice or solicited trades in securities in any way. For example, the broker-dealer may contact annually: (i) holders of the top 10 highest grossing client accounts for that year [~~;~~] and (ii) holders of one-half of the next 25% highest grossing client accounts.

21VAC5-20-150. Examination/qualification.

A. An individual applying for registration as a broker-dealer agent shall be required to show evidence of passing within the two-year period immediately preceding the date of the application: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66~~, and the General Securities Representative Examination, Series 7~~; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

B. Any individual who has met the qualifications set forth in subsection A of this section [~~,~~] and has been registered in any state jurisdiction requiring registration within the two-year period immediately preceding the date of the filing of an application shall not be required to comply with the examination requirement set forth in subsection A of this section, except that the commission may require additional examinations for any individual found to have violated any federal or state securities laws.

Part III
Agents of the Issuer

21VAC5-20-160. Application for registration as an agent of the issuer.

A. Application for registration as an agent of the issuer shall be filed on and in compliance with all requirements and forms prescribed by the commission.

B. An application shall be deemed incomplete for purposes of applying for registration as an agent of the issuer unless the following executed forms, fee and information are submitted:

1. Form U-4.

2. The statutory fee in the amount of $30. The check must be made payable to the Treasurer of Virginia.

~~3. Completed Agreement for Inspection of Records Form.~~

~~4.~~ 3. Evidence in the form of a NASD exam report of passing: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66, and the General Securities Representative Examination, Series 7; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

4. All individuals listed on Part 1 of Form ADV in Schedule A as having supervisory or control of the investment advisor shall take and pass the examinations as required in subdivision [~~B~~] 3 of this [~~section~~ subsection], and register as a representative of the investment advisor.

5. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21VAC5-30-80. Adoption of NASAA statements of policy.

The commission adopts the following NASAA statements of policy that shall apply to the registration of securities in the Commonwealth. It will be considered a basis for denial of an application if an offering fails to comply with an applicable statement of policy. While applications not conforming to a statement of policy shall be looked upon with disfavor, where good cause is shown, certain provisions may be modified or waived by the commission.

1. Options and Warrants, as amended ~~September 28, 1999~~ March 31, 2008.

2. Underwriting Expenses, Underwriter's Warrants, Selling Expenses and Selling Security Holders, as amended ~~September 28, 1999~~ March 31, 2008.

3. Real Estate Programs, as amended ~~September 29, 1993~~ May 7, 2007.

4. Oil and Gas Programs, as amended ~~October 24, 1991~~ May 7, 2007.

5. Cattle-Feeding Programs, as adopted September 17, 1980.

6. Unsound Financial Condition, as amended ~~September 28, 1999~~ March 31, 2008.

7. Real Estate Investment Trusts, as ~~adopted September 29, 1993~~ amended May 7, 2007.

8. Church Bonds, as adopted April 29, 1981.

9. Small Company Offering Registrations, as adopted April 28, 1996.

10. NASAA Guidelines Regarding Viatical Investment, as adopted October 1, 2002.

11. Corporate Securities Definitions, as amended March 31, 2008.

21VAC5-40-30. Uniform limited offering exemption.

A. Nothing in this exemption is intended to relieve, or should be construed as in any way relieving, issuers or persons acting on their behalf from providing disclosure to prospective investors adequate to satisfy the anti-fraud provisions of the Act.

In view of the objective of this section and the purpose and policies underlying the Act, this exemption is not available to an issuer with respect to a transaction which, although in technical compliance with this section, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this section.

Nothing in this section is intended to exempt registered broker-dealers or agents from the due diligence standards otherwise applicable to such registered persons.

Nothing in this section is intended to exempt a person from the broker-dealer or agent registration requirements of Article 3 (§ 13.1-504 et seq.) of Chapter 5 of Title 13.1 of the Code of Virginia, except in the case of an agent of the issuer who receives no sales commission directly or indirectly for offering or selling the securities and who is not subject to subdivision B 2 of this section.

B. For the purpose of the limited offering exemption referred to in § 13.1-514 B 13 of the Act, the following securities are determined to be exempt from the securities registration requirements of Article 4 (§ 13.1-507 et seq.) of Chapter 5 of Title 13.1 of the Code of Virginia.

Any securities offered or sold in compliance with the Securities Act of 1933, Regulation D (Reg. D), Rules 230.501-230.503 and 230.505 ~~as made effective in Release No. 33-6389 (47 FR 11251), and as amended in Release Nos. 33-6437 (47 FR 54764), 33-6663 (51 FR 36385), 33-6758 (53 FR 7866) and 33-6825 (54 FR 11369)~~ and which satisfy the following further conditions and limitations:

1. The issuer and persons acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that all persons who offer or sell securities subject to this section are registered in accordance with § 13.1-505 of the Act except in the case of an agent of the issuer who receives no sales commission directly or indirectly for offering or selling the securities and who is not subject to subdivision 2 of this subsection.

2. No exemption under this section shall be available for the securities of any issuer if any of the persons described in the Securities Act of 1933, Regulation A, Rule 230.262(a), (b), or (c) (17 CFR 230.262):

a. Has filed a registration statement which is the subject of a currently effective stop order entered pursuant to any state's securities law within five years prior to the beginning of the offering.

b. Has been convicted within five years prior to the beginning of the offering of a felony or misdemeanor in connection with the purchase or sale of a security or a felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.

c. Is currently subject to a state's administrative order or judgment entered by that state's securities administrator within five years prior to the beginning of the offering or is subject to a state's administrative order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts or omitting to state material facts, was found and the order or judgment was entered within five years prior to the beginning of the offering.

d. Is currently subject to a state's administrative order or judgment which prohibits the use of any exemption from registration in connection with the purchase or sale of securities.

e. Is currently subject to an order, judgment, or decree of a court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to an order, judgment or decree of any court of competent jurisdiction, entered within five years prior to the beginning of the offering, permanently restraining or enjoining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of a false filing with a state.

f. The prohibitions of subdivisions a, b, c and e of this subdivision shall not apply if the party subject to the disqualifying order, judgment or decree is duly licensed or registered to conduct securities related business in the state in which the administrative order, judgment or decree was entered against such party.

g. A disqualification caused by this subsection is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification, or the State Corporation Commission, determines upon a showing of good cause that it is not necessary under the circumstances that the exemption under this section be denied.

3. The issuer shall file with the commission no later than 15 days after the first sale in this state from an offering being made in reliance upon this exemption:

a. A notice on Form D (17 CFR 239.500), as filed with the SEC.

~~b. An undertaking by the issuer to promptly provide, upon written request, the information furnished by the issuer to offerees.~~

~~c. An executed consent to service of process (Form U2) appointing the Clerk of the commission as its agent for purpose of service of process, unless a currently effective consent to service of process is on file with the commission.~~

~~d.~~ b. A filing fee of $250 payable to the Treasurer of Virginia.

4. In sales to nonaccredited investors, the issuer and persons acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that the investment is suitable for the purchaser as to the purchaser's other security holdings and financial situation and needs.

5. Offers and sales of securities which are exempted by this section shall not be combined with offers and sales of securities exempted by another regulation or section of the Act; however, nothing in this limitation shall act as an election. The issuer may claim the availability of another applicable exemption should, for any reason, the securities or persons fail to comply with the conditions and limitations of this exemption.

6. In any proceeding involving this section, the burden of proving the exemption or an exception from a definition or condition is upon the person claiming it.

C. The exemption authorized by this section shall be known and may be cited as the "Uniform Limited Offering Exemption."

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

[FORMS (21VAC5-40)

Form D, Notice of Exempt Offering of Securities, U.S. Securities and Exchange Commission, SEC1972, (eff. 9/08).]

21VAC5-45-20. Offerings conducted pursuant to Rule 506 of federal Regulation D (17 CFR [§] 230.506): Filing requirements and issuer-agent exemption.

A. An issuer offering a security that is a covered security under § 18 (b)(4)(D) of the Securities Act of 1933 (15 USC § 77r(b)(4)(D)) shall file with the commission no later than 15 days after the first sale of such federal covered security in this Commonwealth:

1. A notice on SEC Form D (17 CFR 239.500), as filed with the SEC.

~~2. An executed consent to service of process (Form U-2) appointing the Clerk of the commission as its agent for service of process.~~

~~3.~~ 2. A filing fee of $250 payable to the Treasurer of Virginia.

B. An amendment filing shall contain a copy of the amended SEC Form D. No fee is required for an amendment.

C. For the purpose of this chapter, SEC "Form D" is the document, as adopted by the SEC and in effect on September ~~1, 1996~~ 15, 2008, entitled ~~"Form D; Notice of Sale of Securities pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption," including Part E and the Appendix.~~ "Form D, Notice of Exempt Offering of Securities."

D. Pursuant to § 13.1-514 B 13 of the Act, an agent of an issuer who effects transactions in a security exempt from registration under the Securities Act of 1933 pursuant to rules and regulations promulgated under § 4(2) thereof (15 USC § 77d(2)) is exempt from the agent registration requirements of the Act.

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

[FORMS (21VAC5-45)

Form D, Notice of Exempt Offering of Securities, U.S. Securities and Exchange Commission, SEC1972, (eff. 9/08).]

Part I
Investment Advisor Registration, Notice Filing for Federal Covered Advisors, Expiration, Renewal, Updates and Amendments, Terminations and Merger or Consolidation

21VAC5-80-10. Application for registration as an investment advisor and notice filing as a federal covered advisor.

A. Application for registration as an investment advisor shall be filed in compliance with all requirements of the Investment Advisor Registration Depository (IARD) system and in full compliance with forms and regulations prescribed by the commission and shall include all information required by such forms.

B. An application shall be deemed incomplete for purposes of applying for registration as an investment advisor unless the following executed forms, fee and information are submitted:

1. Form ADV Parts I and II submitted to the IARD system.

2. The statutory fee in the amount of $200 submitted to the IARD system.

3. A copy of the client agreement.

4. A copy of the firm's supervisory and procedures manual as required by 21VAC5-80-170.

5. Copies of all advertising materials.

6. Copies of all [~~stationary~~ stationery] and business cards.

7. A signed affidavit stating that an investment advisor domiciled in Virginia has not conducted investment advisory business prior to registration, and for investment advisors domiciled outside of Virginia an affidavit stating that the advisor has fewer than six clients in any prior 12-month period.

8. The following financial statements:

a. A trial balance of all ledger account;

b. A statement of all client funds or securities that are not segregated;

c. A computation of the aggregate amount of client ledger debit balances;

d. A statement as to the number of client accounts;

e. Financial statements prepared in accordance with generally accepted accounting principles that shall include a balance sheet, income statement, and statement of cash flow.

9. A copy of the firm's disaster recovery plan as required by 21VAC5-80-160 F.

10. At least one qualified individual must have a registration pending on the IARD system on behalf of the investment advisor prior to the grant of registration.

~~3.~~ 11. Any other information the commission may require.

For purposes of this section, the term "net worth" means an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as assets under generally accepted accounting principles), deferred charges such as deferred income tax charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature, home furnishings, automobiles, and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

D. Every person who transacts business in this Commonwealth as a federal covered advisor shall file a notice as prescribed in subsection E of this section in compliance with all requirements of the Investment Advisor Registration Depository (IARD) system.

E. A notice filing for a federal covered advisor shall be deemed incomplete unless the following executed forms, fee and information are submitted:

1. Form ADV.

2. The statutory fee in the amount of $200 submitted to the IARD system.

Part II
Investment Advisor Representative Registration, Expiration, Updates and Amendments, Termination, and Changing Connection from One Investment Advisor to Another

21VAC5-80-70. Application for registration as an investment advisor representative.

A. Application for registration as an investment advisor representative shall be filed in compliance with all requirements of the NASAA/NASD Central Registration Depository system and in full compliance with forms and regulations prescribed by the commission. The application shall include all information required by such forms.

B. An application shall be deemed incomplete for purposes of applying for registration as an investment advisor representative unless the following executed forms, fee and information are submitted:

1. Form U-4.

2. The statutory fee in the amount of $30. The check must be made payable to the NASD.

3. Evidence of passing: (i) the Uniform Investment Adviser Law Examination, Series 65; (ii) the Uniform Combined State Law Examination, Series 66, and the General Securities Representative Examination, Series 7; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

4. All individuals listed on Part 1 of Form ADV in Schedule A as having supervisory or control of the investment advisor shall take and pass the examinations as required in subdivision [~~B~~] 3 of this [~~section~~ subsection], and register as a representative of the investment advisor.

5. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21VAC5-80-110. Termination of registration.

A. When an investment advisor representative terminates a connection with an investment advisor, or an investment advisor terminates connection with an investment advisor representative, the investment advisor shall file with the NASAA/NASD Central Registration Depository system notice of such termination on Form U-5 within 30 calendar days of the date of termination.

B. When an investment advisor representative terminates a connection with a federal covered advisor, the federal covered advisor shall file with the NASAA/NASD Central Registration Depository system notice of such termination on Form U-5 within 30 calendar days of the date of termination.

C. If a representative learns that the investment advisor has not filed the notice, the representative may file notice with the commission at its Division of Securities and Retail Franchising. The commission may terminate the representative's registration if the commission determines that an investment advisor (i) is no longer in existence, (ii) has ceased conducting securities business, or (iii) cannot reasonably be located.

21VAC5-80-130. Examination/qualification.

A. An individual applying for registration as an investment advisor representative shall be required to provide evidence of passing within the two-year period immediately preceding the date of the application: (i) the Uniform Investment Adviser Law Examination, Series 65; (ii) the Uniform Combined State Law Examination, Series 66 and the General Securities Representative Examination, Series 7; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

B. Any individual who ~~is currently~~ has been registered as an investment advisor or investment advisor representative in any state jurisdiction requiring the registration and qualification of investment advisors or investment advisor representatives within the two-year period immediately preceding the date of the filing of an application shall not be required to satisfy the examination requirements ~~for continued registration~~ set forth in subsection A of this section, except that the commission may require additional examinations for any individual found to have violated any federal or state securities laws.

~~Any individual who has not been registered in any state jurisdiction for a period of two years shall be required to comply with the examination requirements of this section.~~

C. The examination requirements shall not apply to an individual who currently holds one of the following professional designations:

1. Certified Financial Planner (CFP) issued by the Certified Financial Planner Board of Standards, Inc.;

2. Chartered Financial Consultant (ChFC) awarded by The American College, Bryn Mawr, Pennsylvania;

3. Personal Financial Specialist (PFS) administered by the American Institute of Certified Public Accountants;

4. Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research;

5. Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America; or

6. Such other professional designation, after reasonable notice and subject to review by the commission, as the Director of the Division of Securities and Retail Franchising designates.

D. In lieu of meeting the examination requirement described in subsection A of this section, an applicant who meets all the qualifications set forth below may file with the commission at

its Division of Securities and Retail Franchising an executed Affidavit for Waiver of Examination (Form S.A.3).

1. No more than one other individual connected with the applicant's investment advisor is utilizing the waiver at the time the applicant files Form S.A.3.

2. The applicant is, and has been for at least the five years immediately preceding the date on which the application for registration is filed, actively engaged in the investment advisory business.

3. The applicant has been for at least the two years immediately preceding the date on which the application is filed the president, chief executive officer or chairman of the board of directors of an investment advisor organized in corporate form or the managing partner, member, trustee or similar functionary of an investment advisor organized in noncorporate form.

4. The investment advisor or advisors referred to in subdivision 3 of this subsection has been actively engaged in the investment advisory business and during the applicant's tenure as president, chief executive officer, chairman of the board of directors, or managing partner, member, trustee or similar functionary had at least $40 million under management.

5. The applicant verifies that he has read and is familiar with the investment advisor and investment advisor representative provisions of the Act and the provisions of Parts I through V of this chapter.

6. The applicant verifies that none of the questions in Item ~~22~~ 14 (disciplinary history) on his Form U-4 have been, or need be, answered in the affirmative.

[~~Part III~~
~~Investment Advisor, Federal Covered Advisor and Investment Advisor Representative Regulations~~]

21VAC5-80-140. ~~Custody of client funds or securities by investment advisors.~~ (Repealed.)

~~An investment advisor who takes or has custody of any securities or funds of any client must comply with the following; provided that an investment advisor having its principal place of business outside this Commonwealth and registered or licensed, and in compliance with the applicable books and records requirements, in the state where its principal place of business is located, shall only be required to make, keep current, maintain and preserve such of the following required books, ledgers and records as are not in addition to those required under the laws of the state in which it maintains its principal place of business:~~

~~1. An investment advisor with its principal place of business located in this Commonwealth shall notify the commission that it has or may have custody. Such notification may be given on Form ADV.~~

~~2. The securities of each client must be segregated, marked to identify the particular client having the beneficial interest therein and held in safekeeping in some place reasonably free from risk of destruction or other loss.~~

~~3. All client funds must be deposited in one or more bank accounts containing only clients' funds, such account or accounts must be maintained in the name of the investment advisor or agent or trustee for such clients, and the investment advisor must maintain a separate record for each such account showing the name and address of the bank where the account is maintained, the dates and amounts of deposits in and withdrawals from the account, and the exact amount of each client's beneficial interest in the account.~~

~~4. Immediately after accepting custody or possession of funds or securities from any client, the investment advisor must notify the client in writing of the place where and the manner in which the funds and securities will be maintained and subsequently, if and when there is a change in the place where or the manner in which the funds or securities are maintained, the investment advisor must give written notice thereof to the client.~~

~~5. At least once every three months, the investment advisor must send each client an itemized statement showing the funds and securities in the investment advisor's custody at the end of such period and all debits, credits and transactions in the client's account during such period.~~

~~6. At least once every calendar year, an independent public accountant must verify all client funds and securities by actual examination at a time chosen by the accountant without prior notice to the investment advisor. A certificate of such accountant stating that he or she has made an examination of such funds and securities, and describing the nature and extent of the examination, shall be filed with the commission promptly after each such examination.~~

~~7. This section shall not apply to an investment advisor also registered as a broker-dealer under § 15 of the Securities Exchange Act of 1934 (15 USC § 78o) if the broker-dealer is (i) subject to and in compliance with SEC Rule 15c3-1 (Net Capital Requirements for Brokers or Dealers) (17 CFR 240.15c3-1) under the Securities Exchange Act of 1934, or (ii) a member of an exchange whose members are exempt from SEC Rule 15c3-1, (17 CFR 240.15c3-1) under the provisions of paragraph (b)(2) thereof, and the broker-dealer is in compliance with all regulations and settled practices of the exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.~~

[Part III
Investment Advisor, Federal Covered Advisor and Investment Advisor Representative Regulations]

21VAC5-80-145. Custody requirements for investment advisors.

A. For purposes of this section, the following definitions shall apply:

1. "Custody" means holding directly or indirectly, client funds or securities, or having any authority to obtain possession of them.

a. Custody includes:

(1) Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving them;

(2) Any arrangement (including a general power of attorney) under which the investment advisor is permitted to withdraw client funds or securities maintained with a custodian upon the investment advisor's instruction to the custodian; and

(3) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company, or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives the investment advisor or the investment advisor's supervised person legal ownership of or access to client funds or securities.

b. Receipt of client's securities or checks drawn by clients and made payable to unrelated third parties will not meet the definition of custody if forwarded to the third party within 24 hours of receipt and the advisor maintains the following records:

(1) A ledger or other listing of all securities or funds held or obtained, including the following information:

(a) Issuer;

(b) Type of security and series;

(c) Date of issue;

(d) For debt instruments, the denomination, interest rate and maturity date;

(e) Certificate number, including alphabetical prefix or suffix;

(f) Name in which registered;

(g) Date given to the advisor;

(h) Date sent to client or sender;

(i) Form of delivery to client or sender, or copy of the form of delivery to client or sender; and

(j) Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

2. "Independent representative" means a person who:

a. Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;

b. Does not control, is not controlled by, and is not under common control with the investment advisor; and

c. Does not have, and has not had within the past two years, a material business relationship with the investment advisor.

3. "Qualified custodian" means the following independent institutions or entities that are not affiliated with the advisor by any direct or indirect common control and have not had a material business relationship with the advisor in the previous two years:

a. A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act, 12 USC § 1813;

b. A registered broker-dealer holding the client assets in customer accounts;

c. A registered futures commission merchant registered under § 4f(a) of the Commodity Exchange Act, 7 USC § 6f(a), holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

d. A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

B. Requirements.

1. If the investment advisor is registered or required to be registered, it is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice, or course of business under § 13.1-502 of the Virginia Securities Act for the investment advisor to have custody of client funds or securities unless:

a. The investment advisor notifies the commission in writing that the investment advisor has or may have

custody. Such notification is required on Form ADV submitted to the IARD system;

b. A qualified custodian maintains those funds and securities in a separate account for each client under that client's name or in accounts that contain only investment advisor's clients' funds and securities, under the investment advisor's name as agent or trustee for the clients;

c. If the investment advisor opens an account with a qualified custodian on his client's behalf, either under the client's name or under the investment advisor's name as agent, the investment advisor must notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information;

d. At least quarterly, the investment advisor sends an account statement to each client for whom the investment advisor has custody of funds or securities, identifying the amount of funds and of each security of which the investment advisor has custody at the end of the period and setting forth all transactions during that period; and

(1) An independent certified public accountant verifies all client funds and securities by actual examination at least once during each calendar year at a time chosen by the accountant without prior notice or announcement to the advisor and that is irregular from year to year, and files a copy of the auditor's report and financial statements with the commission within 30 days after the completion of the examination, along with a letter stating that it has examined the funds and securities and describing the nature and extent of the examination.

(2) The independent certified public accountant, upon finding any material discrepancies during the course of the examination, notifies the commission within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Division of Securities and Retail Franchising.

(3) If the investment advisor is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle), the account statements required under [~~subdivisions c and~~ subdivision 1] d of this [~~subdivision~~ subsection] must be sent to each limited partner (or member or other beneficial owner or their independent representative).

(4) A client may designate an independent representative to receive, on his behalf, notices and account statements as required under subdivisions [~~3 and 4~~ 1 c and d] of this subsection.

2. An advisor who has custody as defined in subdivision A 1 a (2) of this section by having fees directly deducted from client accounts shall provide the following safeguards:

a. The investment advisor must have written authorization from the client to deduct advisory fees from the account held with the qualified custodian.

b. Each time a fee is directly deducted from a client account, the investment advisor must concurrently:

(1) Send the qualified custodian an invoice of the amount of the fee to be deducted from the client's account; and

(2) Send the client an invoice itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee.

c. The investment advisor notifies the commission in writing that the investment advisor intends to use the safeguards provided above. Such notification is required to be given on Form ADV.

d. An investment advisor having custody solely because it meets the definition of custody as defined in subdivision A 1 of this section and who complies with the safekeeping requirements in this subsection will not be required to meet the financial requirements for custodial advisors as set forth in 21VAC5-80-180 [and subdivisions 1 d (1) and (2) of this subsection].

3. An investment advisor who has custody as defined in subdivision A 1 of this section and who does not meet the exception provided [~~under this subdivision~~ in subdivision C] 3 of this [~~subsection~~ section] must, in addition to the safeguards set forth in [~~subdivision A 4~~ subdivisions 1 a through d] of this subsection, also comply with the following:

a. Hire an independent party to review all fees, expenses, and capital withdrawals from the pooled accounts.

b. Send all invoices or receipts to the independent party, detailing the amount of the fee, expenses, or capital withdrawal and the method of calculation such that the independent party can:

(1) Determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement); and

(2) Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment advisor.

c. For purposes of this section, an independent party means a person who:

(1) Is engaged by an investment advisor to act as a gatekeeper for the payment of fees, expenses, and capital withdrawals from the pooled investment;

(2) Does not control and is not controlled by and is not under common control with the investment advisor, either directly or indirectly; and

(3) Does not have, and has not had within the past two years, a material business relationship with the investment advisor.

d. The investment advisor notifies the commission in writing that the investment advisor intends to use the safeguards provided above. Such notification is required to be given on Form ADV.

e. An investment advisor having custody solely because it meets the definition of custody as defined in subdivision A 1 of this section and who complies with the safekeeping requirements in this subsection will not be required to meet the financial requirements for custodial advisors as set forth in 21VAC5-80-180 [and subdivisions 1 d (1) and (2) of this subsection].

4. When a trust retains an investment advisor, investment advisor representative, or employee, director, or owner of an investment advisor as trustee, and the investment advisor acts as the investment advisor to that trust, the investment advisor shall:

a. Notify the commission in writing that the investment advisor intends to use the safeguards provided below. Such notification is required to be given on Form ADV submitted to the IARD system.

b. Send to the grantor of the trust, the attorney for the trust if it is a testamentary trust, the co-trustee (other than the investment advisor; investment advisor representative; or employee, director, or owner of the investment advisor); or a defined beneficiary of the trust, at the same time that it sends any invoice to the qualified custodian, an invoice showing the amount of the trustees' fee or investment management or advisory fee, the value of the assets on which the fees were based, and the specific manner in which the fees were calculated.

c. Enter into a written agreement with a qualified custodian that specifies the qualified custodian will not deliver trust securities to the investment advisor, any investment advisor representative or employee, director, or owner of the investment advisor, nor will transmit any funds to the investment advisor; any investment advisor representative or employee; director or owner of the investment advisor, except that the qualified custodian may pay trustees' fees to the trustee and investment management or advisory fees to investment advisor, provided that:

(1) The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than the investment advisor; investment advisor representative; or employee, director, or owner of the investment advisor); or a defined beneficiary of the trust has authorized the qualified custodian in writing to pay those fees;

(2) The statements for those fees show the amount of the fees for the trustee and, in the case of statements for investment management or advisory fees, show the value of the trust assets on which the fee is based and the manner in which the fee was calculated; and

(3) The qualified custodian agrees to send to the grantor of the trust, the attorneys for a testamentary trust, the co-trustee (other than the investment advisor; investment advisor representative; or employee, director, or owner of the investment advisor); or a defined beneficiary of the trust, at least quarterly, a statement of all disbursements from the account of the trust, including the amount of investment management fees paid to the investment advisor and the amount of trustees' fees paid to the trustee.

d. Except as otherwise set forth in subdivision [~~3~~ 4] d (1) of this subsection, the qualified custodian may transfer funds or securities, or both, of the trust only upon the direction of the trustee (who may be the investment advisor; investment advisor representative; or employee, director, or owner of the investment advisor), who the investment advisor has duly accepted as an authorized signatory. The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than the investment advisor; investment advisor representative; or employee, director, or owner of the investment advisor); or a defined beneficiary of the trust, must designate the authorized signatory for management of the trust. The direction to transfer funds or securities, or both, can only be made to the following:

(1) To a trust company, bank trust department, or brokerage firm independent of the investment advisor for the account of the trust to which the assets relate;

(2) To the named grantors or to the named beneficiaries of the trust;

(3) To a third person independent of the investment advisor in payment of the fees or charges of the third person including, but not limited to:

(a) Attorney's, accountant's, or qualified custodian's fees for the trust; and

(b) Taxes, interest, maintenance, or other expenses, if there is property other than securities or cash owned by the trust;

[~~(c)~~ (4)] To third persons independent of the investment advisor for any other purpose legitimately associated with the management of the trust; or

[~~(d)~~ (5)] To a broker-dealer in the normal course of portfolio purchases and sales, provided that the transfer is made on payment against delivery basis or payment against trust receipt.

[~~5.~~ e.] An investment advisor having custody solely because it meets the definition of custody as defined in subdivision A 1 of this section and who complies with the safekeeping requirements in this subsection, will not be required to meet the financial requirements for custodial advisors as set forth in 21VAC5-80-180.

C. Exceptions.

1. With respect to shares of an open-end company as defined in § 5(a)(1) of the Investment Company Act of 1940, 15 USC § 80a-5(a)(1) (mutual fund), the investment advisor may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with subsection B of this section.

2. Certain privately offered securities.

a. An investment advisor is not required to comply with subsection B of this section with respect to securities that are:

(1) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(2) Uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and

(3) Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

b. Notwithstanding subdivision [~~B~~] 2 a of this [~~section~~ subsection], the provisions of subdivision [~~B~~] 2 of this [~~section~~ subsection] are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, the audited financial statements are distributed, as described in subdivision [~~B~~] 3 of this [~~section~~ subsection] and the investment advisor notifies the commission in writing that the investment advisor intends to provide audited financial statements, as described above. Such notification is required to be given on Form ADV.

3. The investment advisor is not required to comply with subdivision B 1 c of this section with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year. The investment advisor shall also notify the commission in writing that the investment advisor intends to employ the use of the audit safeguards described above. Such notification is required to be given on Form ADV.

4. The investment advisor is not required to comply with this section with respect to the account of an investment company registered under the Investment Company Act of 1940, 15 USC §§ 80a-1 to 80a-64.

5. The investment advisor is not required to comply with safekeeping requirements of subsection B of this section or the net worth and bonding requirements of 21VAC5-80-180 if the investment advisor has custody solely because the investment advisor, investment advisor representative or employee, director, or owner of the investment advisor is a trustee for a beneficial trust, if all of the following conditions are met for each trust:

a. The beneficial owner of the trust is a parent, a grandparent, a spouse, a sibling, a child, or a grandchild [, or the legal beneficiary] of the trustee. These relationships shall include "step" relationships.

b. For each account under subdivision 5 a of this subsection the investment advisor complies with the following:

(1) Provide a written statement to each beneficial owner of the account setting forth a description of the requirements of subsection B of this section and the reasons why the investment advisor will not be complying with those requirements.

(2) Obtain from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement required under subdivision 5 a [(1)] of this subsection.

(3) Maintain a copy of both documents described in subdivisions [~~B 4 c and d~~ 5 a (1) and (2)] of this [~~section~~ subsection] until the account is closed or the investment advisor is no longer trustee.

6. Any investment advisor who intends to have custody of client funds or securities but is not able to utilize a qualified custodian as defined in subdivision A 3 of this section shall first obtain approval from the commission and comply with all of the applicable safekeeping provisions under subsection B of this section including taking responsibility for those provisions that are designated to be performed by a qualified custodian.

21VAC5-80-160. Recordkeeping requirements for investment advisors.

A. Every investment advisor registered or required to be registered under the Act shall make and keep true, accurate and current the following books, ledgers and records, except an investment advisor having its principal place of business outside this Commonwealth and registered or licensed, and in compliance with the applicable books and records requirements, in the state where its principal place of business is located, shall only be required to make, keep current, maintain and preserve such of the following required books, ledgers and records as are not in addition to those required under the laws of the state in which it maintains its principal place of business:

1. A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

2. General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

3. A memorandum of each order given by the investment advisor for the purchase or sale of any security, of any instruction received by the investment advisor from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment advisor who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank, broker or dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

4. All check books, bank statements, canceled checks and cash reconciliations of the investment advisor.

5. All bills or statements (or copies of), paid or unpaid, relating to the business as an investment advisor.

6. All trial balances, financial statements prepared in accordance with generally accepted accounting principles which shall include a balance sheet, income statement and such other statements as may be required pursuant to 21VAC5-80-180, and internal audit working papers relating to the investment advisor's business as an investment advisor.

7. Originals of all written communications received and copies of all written communications sent by the investment advisor relating to (i) any recommendation made or proposed to be made and any advice given or proposed to be given; (ii) any receipt, disbursement or delivery of funds or securities; and (iii) the placing or execution of any order to purchase or sell any security; however, (a) the investment advisor shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment advisor, and (b) if the investment advisor sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment advisor shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment advisor shall retain with a copy of the notice, circular or advertisement a memorandum describing the list and the source thereof.

8. A list or other record of all accounts which list identifies the accounts in which the investment advisor is vested with any discretionary power with respect to the funds, securities or transactions of any client.

9. All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment advisor, or copies thereof.

10. All written agreements (or copies thereof) entered into by the investment advisor with any client, and all other written agreements otherwise related to the investment advisor's business as an investment advisor.

11. A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media that the investment advisor circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment advisor), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

12. a. A record of every transaction in a security in which the investment advisor or any investment advisory representative of the investment advisor has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment advisor nor any investment advisory representative of the investment advisor has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer or bank with or through whom

the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment advisor or investment advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

b. For purposes of this subdivision 12, the following definitions will apply. The term "advisory representative" means any partner, officer or director of the investment advisor; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment advisor prior to the effective dissemination of the recommendations:

(1) Any person in a control relationship to the investment adviser;

(2) Any affiliated person of a controlling person; and

(3) Any affiliated person of an affiliated person.

"Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with the company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the ownership interest of a company shall be presumed to control the company.

c. An investment advisor shall not be deemed to have violated the provisions of this subdivision 12 because of his failure to record securities transactions of any investment advisor representative if the investment advisor establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

13. a. Notwithstanding the provisions of subdivision 12 of this subsection, where the investment advisor is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment advisor or any investment advisory representative of such investment advisor has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment advisor nor any investment advisory representative of the investment advisor has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment advisor or investment advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

b. An investment advisor is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is less, the investment advisor derived, on an unconsolidated basis, more than 50% of (i) its total sales and revenues, and (ii) its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

c. For purposes of this subdivision 13, the following definitions will apply. The term "advisory representative," when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, means any partner, officer, director or employee of the investment advisor who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons, who obtain information concerning securities recommendations being made by the investment advisor prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

(1) Any person in a control relationship to the investment advisor;

(2) Any affiliated person of a controlling person; and

(3) Any affiliated person of an affiliated person.

d. An investment advisor shall not be deemed to have violated the provisions of this subdivision 13 because of his failure to record securities transactions of any investment advisor representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

14. A copy of each written statement and each amendment or revision, given or sent to any client or prospective client

of such investment advisor in accordance with the provisions of 21VAC5-80-190 and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

15. For each client that was obtained by the advisor by means of a solicitor to whom a cash fee was paid by the advisor, the following:

a. Evidence of a written agreement to which the advisor is a party related to the payment of such fee;

b. A signed and dated acknowledgement of receipt from the client evidencing the client's receipt of the investment advisor's disclosure statement and a written disclosure statement of the solicitor; and,

c. A copy of the solicitor's written disclosure statement. The written agreement, acknowledgement and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 275.206(4)-3 of the Investment Advisers Act of 1940.

For purposes of this regulation, the term "solicitor" means any person or entity who, for compensation, acts as an agent of an investment advisor in referring potential clients.

16. All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment advisor circulates or distributes directly or indirectly, to two or more persons (other than persons connected with the investment advisor); however, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this subdivision.

17. A file containing a copy of all written communications received or sent regarding any litigation involving the investment advisor or any investment advisor representative or employee, and regarding any written customer or client complaint.

18. Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to the client.

19. Written procedures to supervise the activities of employees and investment advisor representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

20. A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self regulatory organization and that pertains to the registrant or its investment advisor representatives, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

21. Any records documenting dates, locations and findings of the investment advisor's annual review of these policies and procedures conducted pursuant to subdivision E 2 of 21VAC5-80-170.

B. If an investment advisor subject to subsection A of this section has custody or possession of securities or funds of any client, the records required to be made and kept under subsection A of this section shall also include:

1. A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to the accounts.

2. A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

3. Copies of confirmations of all transactions effected by or for the account of any client.

4. A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

C. Every investment advisor subject to subsection A of this section who renders any investment advisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment advisor, make and keep true, accurate and current:

1. Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale.

2. For each security in which any client has a current position, information from which the investment advisor can promptly furnish the name of each client and the current amount or interest of the client.

D. Any books or records required by this section may be maintained by the investment advisor in such manner that the identity of any client to whom the investment advisor renders investment advisory services is indicated by numerical or alphabetical code or some similar designation.

E. Every investment advisor subject to subsection A of this section shall preserve the following records in the manner prescribed:

1. All books and records required to be made under the provisions of subsection A through subdivision C 1, inclusive, of this section, except for books and records required to be made under the provisions of subdivisions A 11 and A 16 of this section, shall be maintained in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years of which shall be maintained in the principal office of the investment advisor.

2. Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment advisor and of any predecessor, shall be maintained in the principal office of the investment advisor and preserved until at least three years after termination of the enterprise.

3. Books and records required to be made under the provisions of subdivisions A 11 and A 16 of this section shall be maintained in an easily accessible place for a period of not less than five years, the first two years of which shall be maintained in the principal office of the investment advisor, from the end of the fiscal year during which the investment advisor last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media.

4. Books and records required to be made under the provisions of subdivisions A 17 through A 20, inclusive, of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years, from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment advisor, or for the time period during which the investment advisor was registered or required to be registered in the state, if less.

5. Notwithstanding other record preservation requirements of this subsection, the following records or copies shall be required to be maintained at the business location of the investment advisor from which the customer or client is being provided or has been provided with investment advisory services: (i) records required to be preserved under subdivisions A 3, A 7 through A 10, A 14 and A 15, A 17 through A 19, subsections B and C, and (ii) the records or copies required under the provision of subdivisions A 11 and A 16 of this section which records or related records identify the name of the investment advisor representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in this subsection.

F. Every investment advisor shall establish and maintain a written disaster recovery plan that shall address at a minimum:

1. The identity of individuals that will conduct [or wind down] business on behalf of the investment advisor in the event of death or incapacity of key persons;

2. Means to provide notification to clients of the investment advisor and to those states in which the advisor is registered of the death or incapacity of key persons;

a. Notification shall be provided to the Division of Securities and Retail Franchising via the IARD/CRD system within 24 hours of the death or incapacity of key persons.

b. Notification shall be given to clients within five business days from the death or incapacity of key persons.

3. Means for clients' accounts to continue to be monitored until an orderly liquidation, distribution or transfer of the clients' portfolio to another advisor can be achieved [or until an actual notice to the client of investment advisor death or incapacity and client control of their assets occurs];

4. Means for the credit demands of the investment advisor to be met; and

5. Data backups sufficient to allow rapid resumption of the investment advisor's activities.

~~F.~~ G. An investment advisor subject to subsection A of this section, before ceasing to conduct or discontinuing business as an investment advisor, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the commission in writing of the exact address where the books and records will be maintained during such period.

~~G.~~ H. 1. The records required to be maintained pursuant to this section may be immediately produced or reproduced by photograph on film or, as provided in subdivision 2 of this subsection, on magnetic disk, tape or other computer storage medium, and be maintained for the required time in that form. If records are preserved or reproduced by photographic film or computer storage medium, the investment advisor shall:

a. Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;

b. Be ready at all times to promptly provide any facsimile enlargement of film or computer printout or copy of the

computer storage medium which the commission by its examiners or other representatives may request;

c. Store separately from the original one other copy of the film or computer storage medium for the time required;

d. With respect to records stored on computer storage medium, maintain procedures for maintenance of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction; and

e. With respect to records stored on photographic film, at all times have available, for the commission's examination of its records, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

2. Pursuant to subdivision 1 of this subsection, an advisor may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the advisor's business, are created by the advisor on electronic media or are received by the advisor solely on electronic media or by electronic transmission.

~~H.~~ I. Any book or record made, kept, maintained, and preserved in compliance with SEC Rules 17a-3 (17 CFR 240.17a-3) and 17a-4 (17 CFR 240.17a-4) under the Securities Exchange Act of 1934, which is substantially the same as the book, or other record required to be made, kept, maintained, and preserved under this section shall be deemed to be made, kept, maintained, and preserved in compliance with this section.

~~I.~~ J. For purposes of this section, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected if, before the order is given by the investment advisor, the client has directed or approved the purchase or sale of a definite amount of the particular security.

K. For purposes of this section, "principal place of business" and [~~"principle~~ "principal] office" mean the executive office of the investment advisor from which the officers, partners, or managers of the investment advisor direct, control, and coordinate the activities of the investment advisor.

~~J.~~ L. Every investment advisor registered or required to be registered in this Commonwealth and has its principal place of business in a state other than the Commonwealth shall be exempt from the requirements of this section to the extent provided by the National Securities Markets Improvement Act of 1996 (Pub.L. No. 104-290), provided the investment advisor is licensed in such state and is in compliance with such state's recordkeeping requirements.

VA.R. Doc. No. R09-1797; Filed June 18, 2009, 9:46 a.m.

Final Regulation

Title of Regulation: **21VAC5-110. Retail Franchising Act Rules (amending 21VAC5-110-10, 21VAC5-110-40, 21VAC5-110-50, 21VAC5-110-55, 21VAC5-110-65, 21VAC5-110-75, 21VAC5-110-80, 21VAC5-110-95).**

Statutory Authority: §§ 12.1-13 and 13.1-572 of the Code of Virginia.

Effective Date: July 1, 2009.

Agency Contact: Timothy O'Brien, Chief Examiner, State Corporation Commission, Securities Division, Tyler Building, 9th Floor, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9415, FAX (804) 371-9911, or email tim.obrien@scc.virginia.gov.

Summary:

The amendments (i) replace references to the "grant" of a franchise with "sale" of a franchise, where applicable, due to revisions made to the Virginia Retail Franchising Act during the 2009 Session of the Virginia General Assembly; (ii) delete the definitions of "grant" and "sale"; (iii) delete obsolete disclosure requirements relating to the term "grant" of a franchise; (iv) add an exemption from franchise registration for renewal of an existing franchise; and (v) clarify the materials to be filed with franchise renewal and amendment applications.

AT RICHMOND, JUNE 8, 2009

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. SEC-2009-00023

Ex Parte: In the matter of
Adopting a Revision to the Rules
Governing the Virginia Retail Franchising Act

ORDER ADOPTING AMENDED RULES

By Order entered on April 7, 2009, all interested persons were ordered to take notice that the State Corporation Commission ("Commission") would consider the adoption of a revision to Chapter 110 of Title 21 of the Virginia Administrative Code ("Regulations") entitled "Virginia Retail Franchising Act Rules and Forms." On April 20, 2009, the Division of Securities and Retail Franchising ("Division") mailed the Order to Take Notice of the proposed amendments to the Regulations to all registrants and applicants as of April 9, 2009, and to all interested parties pursuant to the Virginia Retail Franchising Act, § 13.1-557 et seq. of the Code of Virginia. The Order to Take Notice described the proposed amendments and afforded interested parties an opportunity to file written comments or requests for hearing by May 15, 2009. The Order to Take Notice also required the proposed amendments to be published in the Virginia Register of Regulations.

No comments were filed in this matter.

The Commission, upon consideration of the proposed amendments to the Regulations, the recommendation of the Division, and the record in this case, finds that the proposed amendments to the Regulations should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The proposed Regulations, as modified, are attached hereto, made a part hereof, and are hereby ADOPTED effective July 1, 2009.

(2) This matter is dismissed from the Commission's docket, and the papers herein shall be placed in the file for ended causes.

AN ATTESTED COPY of this Order shall be sent to each of the following by the Division to: the Commission's Division of Information Resources; the Commission's Office of General Counsel; and such other persons as the Division deems appropriate.

21VAC5-110-10. Definitions.

"Action" includes complaints, cross claims, counterclaims, and third-party complaints in a judicial action or proceeding, and their equivalents in an administrative action or arbitration.

"Affiliate" means an entity controlled by, controlling, or under common control with, another entity.

"Commission" means Virginia State Corporation Commission.

"Confidentiality clause" means any contract, order, or settlement provision that directly or indirectly restricts a current or former franchisee from discussing his personal experience as a franchisee in the franchisor's system with any prospective franchisee. It does not include clauses that protect franchisor's trademarks or other proprietary information.

"Disclose," "state," "describe," and "list" each mean to present all material facts accurately, clearly, concisely, and legibly in plain English.

"Effective date" means the date on which the franchise becomes registered under the provisions of § 13.1-561 of the Code of Virginia.

"Effective registration" means authorization to offer and ~~grant~~ sell one or more franchises provided that the initial contracts or agreements are substantially identical in their terms or provisions. Whenever the franchisor offers or ~~grants~~ sells more than one franchise and the resulting contracts or agreements vary substantially in their terms or provisions, separate franchises will be deemed to have been offered or ~~granted~~ sold and separate registration will be required. For the purpose of this rule, substantial variation in the contract will relate without limitation to different products, services, fees charged, dues imposed, obligations incurred or investments required to be made by contract or agreement.

"FDD" means Franchise Disclosure Document.

"Financial performance representation" means any representation, including any oral, written, or visual representation, to a prospective franchisee, including a representation in the general media, that states, expressly or by implication, a specific level or range of actual or potential sales, income, gross profits, or net profits. The term includes a chart, table, or mathematical calculation that shows possible results based on a combination of variables.

"Fiscal year" ~~refers to~~ [means] the franchisor's fiscal year.

"Franchise seller" means a person that offers to ~~grant, grants~~ sell, sells, or arranges for the ~~grant or~~ sale of a franchise. It includes the franchisor and the franchisor's employees, representatives, agents, subfranchisors, and third-party brokers who are involved in franchise sales activities. It does not include existing franchisees who sell only their own outlet and who are otherwise not engaged in franchise sales on behalf of the franchisor.

~~"Grant" or "sale" of a franchise includes an agreement whereby a person obtains a franchise from a franchise seller for value by purchase, license, or otherwise. It does not include extending or renewing an existing franchise agreement where there has been no interruption in the franchisee's operation of the business, unless the new agreement contains terms and conditions that differ materially from the original agreement.~~

"Material change" includes a fact, circumstance, or condition [~~which~~ that] would have a substantial likelihood of influencing a reasonable prospective franchisee in the making of a decision relating to the purchase of a franchise.

"Parent" means an entity that controls another entity directly or indirectly through one or more subsidiaries.

"Person" means any individual, group, association, limited or general partnership, corporation, or any other entity.

"Plain English" means the organization of information and language usage understandable by a person unfamiliar with the franchise business. It incorporates short sentences, definite, concrete, everyday language, active voice, and tabular presentation of information where possible. It avoids legal jargon, highly technical business terms, and multiple negatives.

"Predecessor" means a person from whom the franchisor acquired, directly or indirectly, the major portion of the franchisor's assets.

"Principal business address" means the street address of a person's home office in the United States. A principal business address cannot be a post office box or private mail drop.

"Prospective franchisee" means any person (including any agent, representative, or employee) who approaches or is approached by a franchise seller to discuss the possible establishment of a franchise relationship.

"Signature" means a person's affirmative step to authenticate his identity. It includes a person's handwritten signature, as well as a person's use of security codes, passwords, electronic signatures, and similar devices to authenticate his identity.

"Trademark" includes trademarks, service marks, names, logos, and other commercial symbols.

"Virginia Retail Franchising Act" means § 13.1-557 et seq. of the Code of Virginia.

21VAC5-110-40. Pre-effective and post-effective amendments to the registration.

A. Upon the occurrence of a material change, the franchisor shall amend the effective registration filed at the commission. An amendment to an application filed either before or after the effective date of registration may include only the pages containing the information being amended if pagination is not disturbed. The amended pages must be black-lined to show all additions, deletions, and other changes from the franchisor's previous submission. The franchisor may not use margin balloons or color highlights to show changes.

B. An application to amend a franchise registration is made by submitting the following completed forms and other material:

1. Uniform Franchise Registration Application page, Form A;

2. One complete clean copy of the ~~updated~~ amended Franchise Disclosure Document ~~pages~~;

3. One complete copy of the amended Franchise Disclosure Document ~~pages marked in black~~ black-lined to show all additions, deletions, and other changes; and

4. Application fee (payable to the "Treasurer of Virginia"). The fee shall accompany all post-effective amendments unless submitted in connection with an application for renewal.

C. The certifications made by or on behalf of the franchisor in Form A shall extend and apply to all documents and materials filed in connection with the amendment application, including any documents or materials submitted to the commission subsequent to the initial filing that may be required to complete the amendment application.

D. In addition to paper copies of the materials required by subsection B of this section, the franchisor may file one copy of the complete franchise amendment application, including a marked and unmarked copy of the Franchise Disclosure Document, on a CD-ROM in PDF format, subject to the following conditions:

1. The transmittal letter submitting the application must contain a representation that all of the information contained in the electronic file is identical to the paper documents;

2. The electronic version of the Franchise Disclosure Document must be text searchable; and

3. If the commission's review of the application results in any revision to the documents, the franchisor must submit a revised CD-ROM containing a marked and unmarked final copy of the Franchise Disclosure Document, and final copies of all other application documents. The revised CD-ROM must be accompanied by a transmittal letter as described in subdivision 1 of this subsection.

E. An example of Form A is printed at the end of this chapter.

21VAC5-110-50. Expiration; application to renew the registration.

A. A franchise registration expires at midnight on the annual date of the registration's effectiveness. An application to renew the franchise registration should be filed 30 days prior to the expiration date in order to prevent a lapse of registration under the Virginia statute.

B. An application for renewal of a franchise registration is made by submitting the following completed forms and other material:

1. Uniform Franchise Registration Application page, Form A;

2. Updated Franchise Disclosure Document;

3. One complete copy of the amended Franchise Disclosure Document ~~pages marked in black~~ black-lined to show all additions, deletions, and other changes, using no margin balloons or color highlights; and

4. Application fee (payable to the "Treasurer of Virginia").

C. The certifications made by or on behalf of the franchisor in Form A shall extend and apply to all documents and materials filed in connection with the renewal application, including any documents or materials submitted to the commission subsequent to the initial filing that may be required to complete the renewal application.

D. In addition to paper copies of the materials required by subsection B of this section, the franchisor may file one copy of the complete franchise renewal application, including a marked and unmarked copy of the Franchise Disclosure Document, on a CD-ROM in PDF format, subject to the following conditions:

1. The transmittal letter submitting the application must contain a representation that all of the information contained in the electronic file is identical to the paper documents;

2. The electronic version of the Franchise Disclosure Document must be text searchable; and

3. If the commission's review of the application results in any revision to the documents, the franchisor must submit a revised CD-ROM containing a marked and unmarked final copy of the Franchise Disclosure Document, and final copies of all other application documents. The revised CD-ROM must be accompanied by a transmittal letter as described in subdivision 1 of this subsection.

E. An example of Form A is printed at the end of this chapter.

21VAC5-110-55. The Franchise Disclosure Document.

A. Format. The Franchise Disclosure Document must be prepared in accordance with §§ 436.3-436.5 of the Federal Trade Commission Franchise Rule (16 CFR 436.3-436.5), subject to the modifications set forth in subsections B ~~through E~~ and C of this section.

B. Financial statements. Notwithstanding § 436.5(u)(2) of the Federal Trade Commission Franchise Rule (16 CFR 436.5), a start-up franchisor in its first partial or full fiscal year selling franchises shall provide an opening balance sheet that has been audited by an independent certified public accountant using generally accepted United States auditing standards.

C. State cover page. The Franchise Disclosure Document shall include the following state cover page prepared in accordance with this subsection, which must immediately follow the Federal Trade Commission required cover page:

1. State the following legend:

STATE COVER PAGE

Your state may have a franchise law that requires a franchisor to register or file with a state franchise administrator before offering or selling in your state. REGISTRATION OF A FRANCHISE BY A STATE DOES NOT MEAN THAT THE STATE RECOMMENDS THE FRANCHISE OR HAS VERIFIED THE INFORMATION IN THIS DISCLOSURE DOCUMENT.

Call the state franchise administrator listed in Exhibit __ for information about the franchisor or about franchising in your state.

2. State the following:

MANY FRANCHISE AGREEMENTS DO NOT ALLOW YOU TO RENEW UNCONDITIONALLY AFTER THE INITIAL TERM EXPIRES. YOU MAY HAVE TO SIGN A NEW AGREEMENT WITH DIFFERENT TERMS AND CONDITIONS IN ORDER TO CONTINUE TO OPERATE YOUR BUSINESS. BEFORE YOU BUY, CONSIDER WHAT RIGHTS YOU HAVE TO RENEW YOUR FRANCHISE, IF ANY, AND WHAT TERMS YOU MIGHT HAVE TO ACCEPT IN ORDER TO RENEW.

3. If any of the following apply, state the following, using capital letters as shown:

Please consider the following RISK FACTORS before you buy this franchise:

THE FRANCHISE AGREEMENT REQUIRES YOU TO RESOLVE DISPUTES WITH US BY [LITIGATION/ARBITRATION/MEDIATION] ONLY IN [STATE]. OUT-OF-STATE [LITIGATION/ARBITRATION/MEDIATION] MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST YOU MORE TO [LITIGATE/ARBITRATE/MEDIATE] WITH US IN [STATE] THAN IN YOUR OWN STATE.

THE FRANCHISE AGREEMENT STATES THAT [STATE] LAW GOVERNS THE AGREEMENT, AND THIS LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS.

4. In addition to the above, disclose other risk factors required by the state administrator.

5. If one or more risk factors applies, also state:

THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.

6. If you use the services of a franchise broker or referral source, state the following:

We use the services of one or more FRANCHISE BROKERS or referral sources to assist us in selling our franchise. A franchise broker or referral source represents us, not you. We pay this person a fee for selling our franchise or referring you to us. You should be sure to do your own investigation of the franchise.

7. State the following:

Effective Date:

a. Leave the effective date blank until notified of effectiveness by the state administrator.

b. If an applicant is using a multistate disclosure document, the applicant may list multiple state effective dates together on a separate page that is to be inserted immediately following the state cover page.

~~D. To conform language to the Virginia Retail Franchising Act, 21VAC5-110-95 A 5 b adds certain terms to the Franchise Disclosure Document cover page statement mandated by § 436.3(e)(2) of the Federal Trade Commission Franchise Rule. The franchisor may comply with this requirement of 21VAC5-110-95 by including the required~~

~~statement in the text of the Franchise Disclosure Document cover page or in an additional cover page attached as part of a Virginia addendum to the Franchise Disclosure Document.~~

~~E. To conform language to the Virginia Retail Franchising Act, 21VAC5-110-95 B 23 a adds certain terms to the Franchise Disclosure Document receipt page statement mandated by § 436.5(w)(1) of the Federal Trade Commission Franchise Rule. The franchisor may comply with this requirement of 21VAC5-110-95 by including the required statement in the text of the Franchise Disclosure Document or in an additional receipt page attached as part of a Virginia addendum to the Franchise Disclosure Document.~~

21VAC5-110-65. Escrow and deferral.

A. Escrow requirement. The commission may require a franchisor to escrow franchise fees and other payments made by a franchisee to the franchisor until the franchisor's pre-opening obligations under the franchise agreement have been satisfied. The commission may require escrow at any time after the submission of a registration or renewal application and upon a finding that the grounds enumerated in clause (i) of subdivision A 2 of § 13.1-562 of the Act as provided in Chapter 668 of the 2007 Acts of Assembly exist.

B. Depository. Funds subject to an escrow condition shall be placed in a separate trust account with a national bank or a state chartered bank or trust company transacting business in the Commonwealth of Virginia.

C. Compliance with escrow requirement. The franchisor shall file with the commission the following to comply with the commission's escrow requirement:

1. An original, fully executed copy of the Escrow Agreement, Form K;

2. A written consent from the depository agreeing to operate the escrow account under this regulation;

3. The name and address of the depository and the account number of the escrow account;

4. The name, address, telephone number and email address of an individual or individuals at the depository who may be contacted by the commission regarding the escrow account; and

5. An amended franchise application reflecting, in Item 5 of the Franchise Disclosure Document or in a Virginia Addendum to the Franchise Disclosure Document, that the commission has imposed the escrow requirement and the material terms of that escrow condition, including the name of the depository.

D. Operation of escrow account. After the commission imposes an escrow requirement upon the franchisor, the franchisor shall:

1. Make franchisee checks for franchise fees or other payments for the franchisor payable to the depository; and

2. Deposit with the depository, within two business days of the receipt, the funds described in subdivision 1 of this subsection.

Deposits made to the depository shall remain escrowed until the commission authorizes the release of the funds.

E. Release of escrowed funds.

1. A franchisor may apply to the commission for the release of escrowed funds together with any interest earned.

2. A franchisor's application to the commission to authorize the release of escrowed funds to the franchisor shall be in writing, verified by an authorized officer of the franchisor and shall contain:

a. The franchisor's statement that all proceeds from the ~~grant~~ sale of franchises have been placed with the depository in accordance with the terms and conditions of the escrow requirement;

b. The depository's statement, signed by an appropriate officer, setting forth the aggregate amount of escrowed funds deposited with the depository and the franchisor's account number with the depository;

c. A list of the names and addresses of each franchisee and the amount held in the escrow account for the account of each franchisee;

d. The amount of funds sought to be released;

e. A written certification from the franchisee stating the amount of funds to be released that acknowledges that the franchisor has completely performed its pre-opening obligations under the franchise agreement, including providing real estate, improvements, equipment, inventory, training, or other items as required by the franchise agreement; and

f. Other information the commission may reasonably require.

3. If the commission finds that the franchisor has fulfilled its obligations under the franchise agreement for a specified franchisee, the commission shall authorize the depository to release to the franchisor the amount held in escrow for the account of the applicable franchisee.

F. Removal of escrow requirement. The commission may remove the escrow requirement at any time, if:

1. The franchisor agrees to defer franchise fees and other initial payments; or

2. Based upon new information, the commission finds that the escrow requirement is no longer necessary and appropriate for the protection of prospective franchisees.

G. Deferral of fees in place of escrow requirement.

1. In lieu of an escrow requirement, the commission may, under appropriate circumstances, accept a franchisor's agreement to defer franchise fees and other initial payments owed by franchisees to the franchisor until the franchisor has completed its pre-opening obligations under the franchise agreement.

2. The franchisor's agreement to defer franchise fees shall be reflected in Item 5 of the Franchise Disclosure Document or in a Virginia Addendum to the Franchise Disclosure Document.

21VAC5-110-75. Exemptions.

Any offer or ~~grant~~ sale of a franchise in a transaction that meets the requirements of this section is exempt from the registration requirement of § 13.1-560 of the Act.

1. Sale or transfer by existing franchisee. The sale or transfer of a franchise by a franchisee who is not an affiliate of the franchisor for the franchisee's own account is exempt if:

a. The franchisee's entire franchise is sold or transferred and the sale or transfer is not effected by or through the franchisor.

b. The sale or transfer is not effected by or through a franchisor merely because a franchisor has a right to approve or disapprove the sale or transfer or requires payment of a reasonable transfer fee.

2. Renewal or extension of existing franchise. The offer or sale of a franchise involving a renewal or extension of an existing franchise where there is no interruption in the operation of the franchised business, and there is no material change in the franchise relationship, is exempt. For purposes of this subdivision, an interruption in the franchised business solely for the purpose of renovating or relocating that business is not a material change in the franchise relationship or an interruption in the operation of the franchised business.

3. Offers and ~~grants~~ sales to existing franchisees. The offer or ~~grant~~ sale of an additional franchise to an existing franchisee of the franchisor for the franchisee's own account is exempt if the franchise being sold is substantially the same as the franchise that the franchisee has operated for at least two years at the time of the offer or ~~grant~~ sale of the franchise, provided the prior sale to the franchisee was pursuant to a franchise offering that was registered or exempt pursuant to the requirements of the Act.

~~3.~~ 4. Seasoned franchisor.

a. The offer or ~~grant~~ sale of a franchise by a franchisor is exempt if:

(1) The franchisor has a net equity, according to its most recently audited financial statements, of not less than $15,000,000 on a consolidated basis, or $1,000,000 on an unaudited basis and is at least 80% owned by a corporation or entity that has a net equity, on a consolidated basis, according to its most recently audited financial statements, of not less than $15,000,000, and the 80% owner guarantees the performance of the franchisor's obligations; and

(2) The franchisor or any 80% owner of the franchisor or the franchisor's predecessor, or any combination thereof, has had at least 25 franchisees conducting the same franchise business to be offered or ~~granted~~ sold for the entire five-year period immediately preceding the offer or ~~grant~~ sale;

b. The exemption set forth in subdivision ~~3~~ 4 of this section may be claimed only if the franchisor:

(1) Files a Form H Notice of Claim of Exemption and other material as set forth in subdivision ~~6~~ 7 of this section no later than 10 business days before the offer or ~~grant~~ sale of any franchise; and

(2) Submits financial statements demonstrating compliance with the conditions set forth in subdivision ~~3~~ 4 a (1) of this section.

c. An initial exemption filing and any renewal filing shall expire after a period of one year. The franchisor shall file for a renewal by making an exemption filing if it intends to offer or ~~grant~~ sell franchises for any additional period annually, at least 10 business days before the expiration of the previously filed Notice of Claim of Exemption.

~~4.~~ 5. Institutional franchisee.

a. The offer or ~~grant~~ sale of a franchise to a bank, savings bank, savings and loan association, trust company, insurance company, investment company, or other financial institution, or to a broker-dealer is exempt when the:

(1) Purchaser is acting for itself or in a fiduciary capacity; and

(2) Franchise is not being purchased for the purpose of resale to an individual not exempt under this regulation.

b. The exemption set forth in subdivision ~~4~~ 5 a of this section may be claimed only if the franchisor files an initial filing Form H, Notice of Claim of Exemption, and other material as set forth in subdivision ~~6~~ 7 a of this section, at least 10 business days before each offer or ~~grant~~ sale of each franchise.

~~5.~~ 6. Disclosure requirements.

a. If a franchisor relies upon any of the exemptions set forth in subdivision ~~2, 3 or 4~~ 3, 4 or 5 of this section, the

franchisor shall provide a disclosure document complying with 21VAC5-110-55 and 21VAC5-110-95 together with all proposed agreements relating to the ~~grant~~ sale of the franchise to a prospective franchisee 14 calendar days before the signing of the agreement or the payment of any consideration.

b. Franchisors filing a claim of exemption under subdivisions ~~3 or~~ 4 or 5 of this section shall include a self-addressed stamped envelope by which the commission may return to the franchisor a confirmation of receipt of the filing and the exemption file number assigned. Correspondence shall refer to the assigned file number in all subsequent related filings and correspondence with the commission.

~~6.~~ 7. Filing requirements for exemptions set forth in subdivisions ~~3 and~~ 4 and 5 of this section.

a. Initial exemption filing.

(1) The initial exemption period shall expire after a period of one year.

(2) Franchisor files an application for exemption of a franchise by filing with the commission no later than 10 business days before the offer or ~~grant~~ sale of any franchise, the following completed forms and other material:

(a) Notice of Claim of Exemption, Form H;

(b) Uniform Consent to Service of Process, Form C;

(c) If the applicant is a corporation or partnership, an authorizing resolution is required if the application is verified by a person other than applicant's officer or general partner;

(d) Franchise Disclosure Document;

(e) Files an undertaking by which it agrees to supply any additional information the commission may reasonably request; and

(f) Application fee of $500 (payable to the Treasurer of Virginia).

b. Amendment to exemption filing.

(1) Upon the occurrence of a material change, the franchisor shall amend the effective exemption filed at the commission.

(2) An application to amend a franchise exemption is made by submitting the following completed forms and other material:

(a) Notice of Claim of Exemption, Form H;

(b) One clean copy of the amended Franchise Disclosure Document; and

(c) Application fee of $100 (payable to the Treasurer of Virginia).

c. Renewal exemption filing.

(1) A franchise exemption expires at midnight on the annual exemption effective date. An application to renew the franchise exemption shall be filed 10 days prior to the expiration date in order to prevent a lapse of exemption under the Act.

(2) An application for renewal of a franchise exemption is made by submitting the following completed forms and other material:

(a) Notice of Claim of Exemption, Form H;

(b) One clean copy of the Franchise Disclosure Document; and

(c) Application fee of $250 (payable to the Treasurer of Virginia).

21VAC5-110-80. General requirements for preparation of disclosure documents; master franchises; electronic disclosure.

A. Disclosure instructions.

1. Disclose all required information clearly, legibly, and concisely in a single document using plain English.

2. The disclosure for each FDD item shall be separately titled and in the required order. Do not repeat the question in the FDD. Respond to each question fully. If the disclosure is not applicable, respond in the negative, but if an answer is required "if applicable," respond only if the requested information applies. Do not qualify a response with a reference to another document unless permitted by the instructions to that Item.

3. For each Item in the FDD, type the requirement's Arabic number and item title. Exhibits should be identified by a letter of the alphabet.

4. The disclosure must be in a form that permits each prospective franchisee to store, download, print, or otherwise maintain the disclosure document for future reference.

5. Separate documents (for example, a confidential operations manual) must not make representations or impose terms that contradict or are materially different from the disclosure in the FDD.

6. Use 8-1/2 by 11 inch paper for the FDD and other forms. All documents and disclosures must be readable, using not less than 11-point type.

7. Franchisors may prepare multistate disclosure documents by including nonpreempted, state-specific information in the text of the FDD or in a Virginia Addendum attached to the FDD. The Virginia Addendum

may be included in an exhibit to the FDD. Any amendments to the franchise agreement may be included in the Virginia Addendum or in a separate exhibit immediately following the franchise agreement.

8. The two copies of the Item 23 receipt pages should be the last two pages of the FDD and should be attached after all exhibits.

9. Before furnishing a FDD, the franchisor must advise the prospective franchisee of the formats in which the FDD is made available, any prerequisites for obtaining the FDD in a particular format, and any conditions necessary for reviewing the FDD in a particular format.

10. Grossly deficient applications may be rejected summarily by the commission as incomplete for filing.

B. Master franchises.

1. When the applicant is a master franchisor seeking to ~~grant~~ sell master franchises (subfranchises), references in these regulations to "franchisee" include the master franchisee (subfranchisor).

2. The offer of master franchises (subfranchises) is an offer separate from the offer of franchises and usually requires a separate registration or exemption. A single application may register the ~~grant~~ sale of a single unit and multiunit franchises if the FDD is not confusing.

3. In an offering by a master franchisee (subfranchisor), "franchisor" means both the master franchisor and master franchisee.

4. Master franchisees (subfranchisors) must disclose the required information about the master franchisor, and to the extent applicable, the same information concerning the master franchisee.

C. Electronic disclosure.

1. A franchisor may deliver a franchise disclosure document over the Internet or by other electronic means, or in machine-readable media, provided:

a. The disclosure document is delivered as a single, integrated document or file;

b. The disclosure document has no extraneous content beyond what is required or permitted by law or regulation, but which may include customary devices for manipulating electronic documents in machine-readable form and tools or access to tools that may be necessary or convenient to enable the recipient to receive and view the disclosure document;

c. The disclosure document has no links to or from external documents or content;

d. The disclosure document is delivered in a form that intrinsically enables the recipient to store, retrieve, and print the disclosure document;

e. The disclosure document conforms as to its content and format to the requirements of applicable law or regulation;

f. The franchisor can prove that it delivered the disclosure document electronically in compliance with this subsection, and that it did so at or before the time required by applicable law or regulation; and

g. The franchisor keeps records of its electronic delivery of disclosure documents and makes those records available on demand by the commission.

2. For the sole purpose of enhancing the prospective franchisee's ability to maneuver through an electronic version of a disclosure document, the franchisor may include scroll bars, internal links, and search features. All other features such as audio, video, animation, pop-up screens or links to external information are prohibited.

3. "Delivery" requires that the disclosure document be conveyed to and received by the prospective franchisee, or that the storage media in which the disclosure is stored be physically delivered to the prospective franchisee in accordance with subdivision 1 a of this subsection.

4. This subsection does not change or waive any other requirement of law or regulation concerning registration or presale disclosure of franchise offerings.

D. Other requirements.

1. If the franchise agreement requires a franchisee to sign a release or waiver as a condition of consenting to some future action, such as a transfer or assignment of the franchise, include a sample copy of the document the franchisee will be asked to sign. This requirement does not apply to negotiated releases or waivers that a franchisee may sign to resolve a dispute with the franchisor.

2. The commission may modify or waive the provisions of this chapter or may require additional documentation or information.

21VAC5-110-95. Requirements for Franchise Disclosure Document preparation.

A. Applications for registration of a franchise, or applications for renewal or amendment of an existing franchise registration, must comply with the following requirements for preparing the contents of a Franchise Disclosure Document. Except for financial statement requirements for start-up franchise systems, as further discussed in Item 21, these requirements are substantively equivalent to the requirements adopted under the Federal Trade Commission Franchise Rule, 16 CFR 436.3 through 16 CFR 436.5, effective July 1, 2007.

Contents of the Franchise Disclosure Document

The Cover Page

Begin the disclosure document with a cover page, in the order and form as follows:

1. The title "**FRANCHISE DISCLOSURE DOCUMENT**" in capital letters and bold type.

2. The franchisor's name, type of business organization, principal business address, telephone number, and, if applicable, email address and primary home page address.

3. A sample of the primary business trademark that the franchisee will use in its business.

4. A brief description of the franchised business.

5. The following statements:

a. The total investment necessary to begin operation of a [franchise system name] franchise is [the total amount of Item 7]. This includes [the total amount in Item 5] that must be paid to the franchisor or affiliate.

b. This disclosure document summarizes certain provisions of your franchise agreement and other information in plain English. Read this disclosure document and all accompanying agreements carefully. You must receive this disclosure document at least 14 calendar days before you sign a binding agreement with, or make any payment to, the franchisor or an affiliate in connection with the proposed franchise sale ~~or grant~~. [The following sentence in bold type] Note, however, that no governmental agency has verified the information contained in this document.

c. The terms of your contract will govern your franchise relationship. Don't rely on the disclosure document alone to understand your contract. Read all of your contract carefully. Show your contract and this disclosure document to an advisor, such as a lawyer or an accountant.

d. Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as "A Consumer's Guide to Buying a Franchise," which can help you understand how to use this disclosure document, is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. You can also visit the FTC's home page at www.ftc.gov for additional information. Call your state agency or visit your public library for other sources of information on franchising.

e. There may also be laws on franchising in your state. Ask your state agencies about them.

f. [The issuance date].

6. A franchisor may include the following statement between the statements set out at subdivisions b and c of the cover page: "You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact [name or office] at [address] and [telephone number]."

7. Franchisors may include additional disclosures on the cover page, on a separate cover page, or addendum to comply with state presale disclosure laws.

The Table of Contents

Include the following table of contents. State the page where each disclosure item begins. List all exhibits by letter, as shown in the following example.

Table of Contents

1. The Franchisor and any Parents, Predecessors, and Affiliates

2. Business Experience

3. Litigation

4. Bankruptcy

5. Initial Fees

6. Other Fees

7. Estimated Initial Investment

8. Restrictions on Sources of Products and Services

9. Franchisee's Obligations

10. Financing

11. Franchisor's Assistance, Advertising, Computer Systems, and Training

12. Territory

13. Trademarks

14. Patents, Copyrights, and Proprietary Information

15. Obligation to Participate in the Actual Operation of the Franchise Business

16. Restrictions on What the Franchisee May Sell

17. Renewal, Termination, Transfer, and Dispute Resolution

18. Public Figures

19. Financial Performance Representations

20. Outlets and Franchisee Information

21. Financial Statements

22. Contracts

23. Receipts

Exhibits

A. Franchise Agreement

B. Additional exhibits as applicable

B. The additional requirements for preparation of the Franchise Disclosure Document are contained below:

1. Item 1: The Franchisor, and any Parents, Predecessors, and Affiliates.

Disclose:

a. The name and principal business address of the franchisor; any parents; and any affiliates that offer franchises in any line of business or provide products or services to the franchisees of the franchisor.

b. The name and principal business address of any predecessors during the 10-year period immediately before the close of the franchisor's most recent fiscal year.

c. The name that the franchisor uses and any names it intends to use to conduct business.

d. The identity and principal business address of the franchisor's agent for service of process.

e. The type of business organization used by the franchisor (for example, corporation, partnership) and the state in which it was organized.

f. The following information about the franchisor's business and the franchises offered:

(1) Whether the franchisor operates businesses of the type being franchised.

(2) The franchisor's other business activities.

(3) The business the franchisee will conduct.

(4) The general market for the product or service the franchisee will offer. In describing the general market, consider factors such as whether the market is developed or developing, whether the goods will be sold primarily to a certain group, and whether sales are seasonal.

(5) In general terms, any laws or regulations specific to the industry in which the franchise business operates.

(6) A general description of the competition.

g. The prior business experience of the franchisor; any predecessors listed in Item 1 b; and any affiliates that offer franchises in any line of business or provide products or services to the franchisees of the franchisor, including:

(1) The length of time each has conducted the type of business the franchisee will operate.

(2) The length of time each has offered franchises providing the type of business the franchisee will operate.

(3) Whether each has offered franchises in other lines of business. If so, include:

(a) A description of each other line of business.

(b) The number of franchises sold in each other line of business.

(c) The length of time each has offered franchises in each other line of business.

2. Item 2: Business Experience.

Disclose by name and position the franchisor's directors, trustees, general partners, principal officers, and any other individuals who will have management responsibility relating to the sale~~, grant~~ or operation of franchises offered by this document. For each person listed in this section, state his principal positions and employers during the past five years, including each position's starting date, ending date, and location.

3. Item 3: Litigation.

a. Disclose whether the franchisor; a predecessor; a parent or affiliate who induces franchise sales ~~or grants~~ by promising to back the franchisor financially or otherwise guarantees the franchisor's performance; an affiliate who offers franchises under the franchisor's principal trademark; and any person identified in Item 2:

(1) Has pending against that person:

(a) An administrative, criminal, or material civil action alleging a violation of a franchise, antitrust, or securities law, or alleging fraud, unfair or deceptive practices, or comparable allegations.

(b) Civil actions, other than ordinary routine litigation incidental to the business, which are material in the context of the number of franchisees and the size, nature, or financial condition of the franchise system or its business operations.

(2) Was a party to any material civil action involving the franchise relationship in the last fiscal year. For purposes of this item, "franchise relationship" means contractual obligations between the franchisor and franchisee directly relating to the operation of the franchised business (such as royalty payment and training obligations). It does not include actions involving suppliers or other third parties, or indemnification for tort liability.

(3) Has in the 10-year period immediately before the disclosure document's issuance date:

(a) Been convicted of or pleaded nolo contendere to a felony charge.

(b) Been held liable in a civil action involving an alleged violation of a franchise, antitrust, or securities law, or involving allegations of fraud, unfair or deceptive practices, or comparable allegations. "Held liable" means that, as a result of claims or counterclaims, the person must pay money or other consideration, must reduce an indebtedness by the amount of an award, cannot enforce its rights, or must take action adverse to its interests.

b. Disclose whether the franchisor; a predecessor; a parent or affiliate who guarantees the franchisor's performance; an affiliate who has offered~~,~~ or sold ~~or granted~~ franchises in any line of business within the last 10 years; or any other person identified in Item 2 is subject to a currently effective injunctive or restrictive order or decree resulting from a pending or concluded action brought by a public agency and relating to the franchise or to a federal, state, or Canadian franchise, securities, antitrust, trade regulation, or trade practice law.

c. For each action identified in subdivision a and b of Item 3, state the title, case number or citation, the initial filing date, the names of the parties, the forum, and the relationship of the opposing party to the franchisor (for example, competitor, supplier, lessor, franchisee, former franchisee, or class of franchisees). Except as provided in subdivision d of Item 3, summarize the legal and factual nature of each claim in the action, the relief sought or obtained, and any conclusions of law or fact.[1] In addition, state:

(1) For pending actions, the status of the action.

(2) For prior actions, the date when the judgment was entered and any damages or settlement terms.[2]

(3) For injunctive or restrictive orders, the nature, terms, and conditions of the order or decree.

(4) For convictions or pleas, the crime or violation, the date of conviction, and the sentence or penalty imposed.

d. For any other franchisor-initiated suit identified in subdivision a (2) of Item 3, the franchisor may comply with the requirements of subdivision c (1) through (4) of Item 3 by listing individual suits under one common heading that will serve as the case summary (for example, "royalty collection suits").

4. Item 4: Bankruptcy.

a. Disclose whether the franchisor; any parent; predecessor; affiliate; officer, or general partner of the franchisor, or any other individual who will have management responsibility relating to the sale~~, grant~~ or operation of franchises offered by this document, has, during the 10-year period immediately before the date of this disclosure document:

(1) Filed as debtor (or had filed against it) a petition under the United States Bankruptcy Code (Bankruptcy Code).

(2) Obtained a discharge of its debts under the Bankruptcy Code.

(3) Been a principal officer of a company or a general partner in a partnership that either filed as a debtor (or had filed against it) a petition under the Bankruptcy Code, or that obtained a discharge of its debts under the Bankruptcy Code while, or within one year after, the officer or general partner held the position in the company.

b. For each bankruptcy, state:

(1) The current name, address, and principal place of business of the debtor.

(2) Whether the debtor is the franchisor. If not, state the relationship of the debtor to the franchisor (for example, affiliate, officer).

(3) The date of the original filing and the material facts, including the bankruptcy court, and the case name and number. If applicable, state the debtor's discharge date, including discharges under Chapter 7 and confirmation of any plans of reorganization under Chapters 11 and 13 of the Bankruptcy Code.

c. Disclose cases, actions, and other proceedings under the laws of foreign nations relating to bankruptcy.

5. Item 5: Initial Fees.

Disclose the initial fees and any conditions under which these fees are refundable. If the initial fees are not uniform, disclose the range or formula used to calculate the initial fees paid in the fiscal year before the issuance date and the factors that determined the amount. For this item, "initial fees" means all fees and payments, or commitments to pay, for services or goods received from the franchisor or any affiliate before the franchisee's business opens, whether payable in lump sum or installments. Disclose installment payment terms in this section or in Item 10.

6. Item 6: Other Fees.

Disclose, in the following tabular form, all other fees that the franchisee must pay to the franchisor or its affiliates, or that the franchisor or its affiliates impose or collect in whole or in part for a third party. State the title "OTHER FEES" in capital letters using bold type. Include any formula used to compute the fees.[3]

Item 6 Table OTHER FEES			
Column 1	Column 2	Column 3	Column 4
Type of fee	Amount	Due Date	Remarks

a. In column 1, list the type of fee (for example, royalties, and fees for lease negotiations, construction, remodeling, additional training or assistance, advertising, advertising cooperatives, purchasing cooperatives, audits, accounting, inventory, transfers, and renewals).

b. In column 2, state the amount of the fee.

c. In column 3, state the due date for each fee.

d. In column 4, include remarks, definitions, or caveats that elaborate on the information in the table. If remarks are long, franchisors may use footnotes instead of the remarks column. If applicable, include the following information in the remarks column or in a footnote:

(1) Whether the fees are payable only to the franchisor.

(2) Whether the fees are imposed and collected by the franchisor.

(3) Whether the fees are nonrefundable or describe the circumstances when the fees are refundable.

(4) Whether the fees are uniformly imposed.

(5) The voting power of franchisor-owned outlets on any fees imposed by cooperatives. If franchisor-owned outlets have controlling voting power, disclose the maximum and minimum fees that may be imposed.

7. Item 7: Estimated Initial Investment.

Disclose, in the following tabular form, the franchisee's estimated initial investment. State the title "YOUR ESTIMATED INITIAL INVESTMENT" in capital letters using bold type. Franchisors may include additional expenditure tables to show expenditure variations caused by differences such as in site location and premises size.

Item 7 Table YOUR ESTIMATED INITIAL INVESTMENT				
Column 1	Column 2	Column 3	Column 4	Column 5
Type of expenditure	Amount	Method of payment	When due	To whom payment is to be made
Total				

a. In column 1:

(1) List each type of expense, beginning with pre-opening expenses. Include the following expenses, if applicable. Use footnotes to include remarks, definitions, or caveats that elaborate on the information in the table.

(a) The initial franchise fee.

(b) Training expenses.

(c) Real property, whether purchased or leased.

(d) Equipment, fixtures, other fixed assets, construction, remodeling, leasehold improvements, and decorating costs, whether purchased or leased.

(e) Inventory to begin operating.

(f) Security deposits, utility deposits, business licenses, and other prepaid expenses.

(2) List separately and by name any other specific required payments (for example, additional training, travel, or advertising expenses) that the franchisee must make to begin operations.

(3) Include a category titled "Additional funds – [initial period]" for any other required expenses the franchisee will incur before operations begin and during the initial period of operations. State the initial period. A reasonable initial period is at least three months or a reasonable period for the industry. Describe in general terms the factors, basis, and experience that the franchisor considered or relied upon in formulating the amount required for additional funds.

b. In column 2, state the amount of the payment. If the amount is unknown, use a low-high range based on the franchisor's current experience. If real property costs cannot be estimated in a low-high range, describe the approximate size of the property and building and the probable location of the building (for example, strip shopping center, mall, downtown, rural, or highway).

c. In column 3, state the method of payment.

d. In column 4, state the due date.

e. In column 5, state to whom payment will be made.

f. Total the initial investment, incorporating ranges of fees, if used.

g. In a footnote, state:

(1) Whether each payment is nonrefundable, or describe the circumstances when each payment is refundable.

(2) If the franchisor or an affiliate finances part of the initial investment, the amount that it will finance, the required down payment, the annual interest rate, rate factors, and the estimated loan repayments. Franchisors may refer to Item 10 for additional details.

8. Item 8: Restrictions on Sources of Products and Services.

Disclose the franchisee's obligations to purchase or lease goods, services, supplies, fixtures, equipment, inventory, computer hardware and software, real estate, or comparable items related to establishing or operating the franchised business either from the franchisor, its designee, or suppliers approved by the franchisor, or under the franchisor's specifications. Include obligations to purchase imposed by the franchisor's written agreement or by the franchisor's practice.[4] For each applicable obligation, state:

a. The good or service required to be purchased or leased.

b. Whether the franchisor or its affiliates are approved suppliers or the only approved suppliers of that good or service.

c. Any supplier in which an officer of the franchisor owns an interest.

d. How the franchisor grants and revokes approval of alternative suppliers, including:

(1) Whether the franchisor's criteria for approving suppliers are available to franchisees.

(2) Whether the franchisor permits franchisees to contract with alternative suppliers who meet the franchisor's criteria.

(3) Any fees and procedures to secure approval to purchase from alternative suppliers.

(4) The time period in which the franchisee will be notified of approval or disapproval.

(5) How approvals are revoked.

e. Whether the franchisor issues specifications and standards to franchisees, subfranchisees, or approved suppliers. If so, describe how the franchisor issues and modifies specifications.

f. Whether the franchisor or its affiliates will or may derive revenue or other material consideration from required purchases or leases by franchisees. If so, describe the precise basis by which the franchisor or its affiliates will or may derive that consideration by stating:

(1) The franchisor's total revenue.[5]

(2) The franchisor's revenues from all required purchases and leases of products and services.

(3) The percentage of the franchisor's total revenues that are from required purchases or leases.

(4) If the franchisor's affiliates also sell or lease products or services to franchisees, the affiliates' revenues from those sales or leases.

g. The estimated proportion of these required purchases and leases by the franchisee to all purchases and leases by the franchisee of goods and services in establishing and operating the franchised businesses.

h. If a designated supplier will make payments to the franchisor from franchisee purchases, disclose the basis for the payment (for example, specify a percentage or a flat amount). For purposes of this disclosure, a "payment" includes the sale of similar goods or services to the franchisor at a lower price than to franchisees.

i. The existence of purchasing or distribution cooperatives.

j. Whether the franchisor negotiates purchase arrangements with suppliers, including price terms, for the benefit of franchisees.

k. Whether the franchisor provides material benefits (for example, renewal or granting additional franchises) to a franchisee based on a franchisee's purchase of particular products or services or use of particular suppliers.

9. Item 9: Franchisee's Obligations.

Disclose, in the following tabular form, a list of the franchisee's principal obligations. State the title "FRANCHISEE'S OBLIGATIONS" in capital letters using bold type. Cross-reference each listed obligation with any applicable section of the franchise or other agreement and with the relevant disclosure document provision. If a particular obligation is not applicable, state "Not Applicable." Include additional obligations, as warranted.

Item 9 Table FRANCHISEE'S OBLIGATIONS		
[In bold] This table lists your principal obligations under the franchise and other agreements. It will help you find more detailed information about your obligations in these agreements and in other items of this disclosure document.		
Obligation	Section in agreement	Disclosure document item
a. Site selection and acquisition/lease		
b. Pre-opening purchase/leases		
c. Site development and other pre-opening requirements		
d. Initial and ongoing training		
e. Opening		
f. Fees		
g. Compliance with standards and policies/operating manual		

h. Trademarks and proprietary information		
i. Restrictions on products/services offered		
j. Warranty and customer service requirements		
k. Territorial development and sales quotas		
l. Ongoing product/service purchases		
m. Maintenance, appearance, and remodeling requirements		
n. Insurance		
o. Advertising		
p. Indemnification		
q. Owner's participation/management/ staffing		
r. Records and reports		
s. Inspections and audits		
t. Transfer		
u. Renewal		
v. Posttermination obligations		
w. Noncompetition covenants		
x. Dispute resolution		
y. Other (describe)		

10. Item 10: Financing.

a. Disclose the terms of each financing arrangement, including leases and installment contracts, that the franchisor, its agent, or affiliates offer directly or indirectly to the franchisee.[6] The franchisor may summarize the terms of each financing arrangement in tabular form, using footnotes to provide additional information. For a sample Item 10 table, see Appendix A. For each financing arrangement, state:

(1) What the financing covers (for example, the initial franchise fee, site acquisition, construction or remodeling, initial or replacement equipment or fixtures, opening or ongoing inventory or supplies, or other continuing expenses).[7]

(2) The identity of each lender providing financing and their relationship to the franchisor (for example, affiliate).

(3) The amount of financing offered or, if the amount depends on an actual cost that may vary, the percentage of the cost that will be financed.

(4) The rate of interest, plus finance charges, expressed on an annual basis. If the rate of interest, plus finance charges, expressed on an annual basis, may differ depending on when the financing is issued, state what that rate was on a specified recent date.

(5) The number of payments or the period of repayment.

(6) The nature of any security interest required by the lender.

(7) Whether a person other than the franchisee must personally guarantee the debt.

(8) Whether the debt can be prepaid and the nature of any prepayment penalty.

(9) The franchisee's potential liabilities upon default, including any:

(a) Accelerated obligation to pay the entire amount due;

(b) Obligations to pay court costs and attorney's fees incurred in collecting the debt;

(c) Termination of the franchise; and

(d) Liabilities from cross defaults such as those resulting directly from nonpayment, or indirectly from the loss of business property.

(10) Other material financing terms.

b. Disclose whether the loan agreement requires franchisees to waive defenses or other legal rights (for example, confession of judgment), or bars franchisees from asserting a defense against the lender, the lender's assignee or the franchisor. If so, describe the relevant provisions.

c. Disclose whether the franchisor's practice or intent is to sell, assign, or discount to a third party all or part of the financing arrangement. If so, state:

(1) The assignment terms, including whether the franchisor will remain primarily obligated to provide the financed goods or services; and

(2) That the franchisee may lose all its defenses against the lender as a result of the sale or assignment.

d. Disclose whether the franchisor or an affiliate receives any consideration for placing financing with the lender. If such payments exist:

(1) Disclose the amount or the method of determining the payment; and

(2) Identify the source of the payment and the relationship of the source to the franchisor or its affiliates.

11. Item 11: Franchisor's Assistance, Advertising, Computer Systems, and Training.

Disclose the franchisor's principal assistance and related obligations of both the franchisor and franchisee as follows. For each obligation, cite the section number of the franchise agreement imposing the obligation. Begin by stating the following sentence in bold type: "Except as listed below, [the franchisor] is not required to provide you with any assistance."

a. Disclose the franchisor's pre-opening obligations to the franchisee, including any assistance in:

(1) Locating a site and negotiating the purchase or lease of the site. If such assistance is provided, state:

(a) Whether the franchisor generally owns the premises and leases it to the franchisee.

(b) Whether the franchisor selects the site or approves an area in which the franchisee selects a site. If so, state further whether and how the franchisor must approve a franchisee-selected site.

(c) The factors that the franchisor considers in selecting or approving sites (for example, general location and neighborhood, traffic patterns, parking, size, physical characteristics of existing buildings, and lease terms).

(d) The time limit for the franchisor to locate or approve or disapprove the site and the consequences if the franchisor and franchisee cannot agree on a site.

(2) Conforming the premises to local ordinances and building codes and obtaining any required permits.

(3) Constructing, remodeling, or decorating the premises.

(4) Hiring and training employees.

(5) Providing for necessary equipment, signs, fixtures, opening inventory, and supplies. If any such assistance is provided, state:

(a) Whether the franchisor provides these items directly or only provides the names of approved suppliers.

(b) Whether the franchisor provides written specifications for these items.

(c) Whether the franchisor delivers or installs these items.

b. Disclose the typical length of time between the earlier of the signing of the franchise agreement or the first payment of consideration for the franchise and the opening of the franchisee's business. Describe the factors that may affect the time period, such as ability to obtain a lease, financing or building permits, zoning and local ordinances, weather conditions, shortages, or delayed installation of equipment, fixtures, and signs.

c. Disclose the franchisor's obligations to the franchisee during the operation of the franchise, including any assistance in:

(1) Developing products or services the franchisee will offer to its customers.

(2) Hiring and training employees.

(3) Improving and developing the franchised business.

(4) Establishing prices.

(5) Establishing and using administrative, bookkeeping, accounting, and inventory control procedures.

(6) Resolving operating problems encountered by the franchisee.

d. Describe the advertising program for the franchise system, including the following:

(1) The franchisor's obligation to conduct advertising, including:

(a) The media the franchisor may use.

(b) Whether media coverage is local, regional, or national.

(c) The source of the advertising (for example, an in-house advertising department or a national or regional advertising agency).

(d) Whether the franchisor must spend any amount on advertising in the area or territory where the franchisee is located.

(2) The circumstances when the franchisor will permit franchisees to use their own advertising material.

(3) Whether there is an advertising council composed of franchisees that advises the franchisor on advertising policies. If so, disclose:

(a) How members of the council are selected.

(b) Whether the council serves in an advisory capacity only or has operational or decision-making power.

(c) Whether the franchisor has the power to form, change, or dissolve the advertising council.

(4) Whether the franchisee must participate in a local or regional advertising cooperative. If so, state:

(a) How the area or membership of the cooperative is defined.

(b) How much the franchisee must contribute to the fund and whether other franchisees must contribute a different amount or at a different rate.

(c) Whether the franchisor-owned outlets must contribute to the fund and, if so, whether those contributions are on the same basis as those for franchisees.

(d) Who is responsible for administering the cooperative (for example, franchisor, franchisees, or advertising agency).

(e) Whether cooperatives must operate from written governing documents and whether the documents are available for the franchisee to review.

(f) Whether cooperatives must prepare annual or periodic financial statements and whether the statements are available for review by the franchisee.

(g) Whether the franchisor has the power to require cooperatives to be formed, changed, dissolved, or merged.

(5) Whether the franchisee must participate in any other advertising fund. If so, state:

(a) Who contributes to the fund.

(b) How much the franchisee must contribute to the fund and whether other franchisees must contribute a different amount or at a different rate.

(c) Whether the franchisor-owned outlets must contribute to the fund and, if so, whether it is on the same basis as franchisees.

(d) Who administers the fund.

(e) Whether the fund is audited and when it is audited.

(f) Whether financial statements of the fund are available for review by the franchisee.

(g) How the funds were used in the most recently concluded fiscal year, including the percentages spent on production, media placement, administrative expenses, and a description of any other use.

(6) If not all advertising funds are spent in the fiscal year in which they accrue, how the franchisor uses the remaining amount, including whether franchisees receive a periodic accounting of how advertising fees are spent.

(7) The percentage of advertising funds, if any, that the franchisor uses principally to solicit new franchise sales ~~or grants~~.

e. Disclose whether the franchisor requires the franchisee to buy or use electronic cash registers or computer systems. If so, describe the systems generally in nontechnical language, including the types of data to be generated or stored in these systems, and state the following:

(1) The cost of purchasing or leasing the systems.

(2) Any obligation of the franchisor, any affiliate, or third party to provide ongoing maintenance, repairs, upgrades, or updates.

(3) Any obligations of the franchisee to upgrade or update any system during the term of the franchise, and, if so, any contractual limitations on the frequency and cost of the obligation.

(4) The annual cost of any optional or required maintenance, updating, upgrading, or support contracts.

(5) Whether the franchisor will have independent access to the information that will be generated or stored in any electronic cash register or computer system. If so, describe the information that the franchisor may access and whether there are any contractual limitations on the franchisor's right to access the information.

f. Disclose the table of contents of the franchisor's operating manual provided to franchisees as of the franchisor's last fiscal year-end or a more recent date. State the number of pages devoted to each subject and the total number of pages in the manual as of this date. This disclosure may be omitted if the franchisor offers the prospective franchisee the opportunity to view the manual before buying the franchise.

g. Disclose the franchisor's training program as of the franchisor's last fiscal year-end or a more recent date.

(1) Describe the training program in the following tabular form. Title the table "TRAINING PROGRAM" in capital letters and bold type.

Item 11 Table

TRAINING PROGRAM

Column 1	Column 2	Column 3	Column 4
Subject	Hours of Classroom Training	Hours of On-The-Job Training	Location

(a) In column 1, state the subjects taught.

(b) In column 2, state the hours of classroom training for each subject.

(c) In column 3, state the hours of on-the-job training for each subject.

(d) In column 4, state the location of the training for each subject.

(2) State further:

(a) How often training classes are held and the nature of the location or facility where training is held (for example, company, home, office, franchisor-owned store).

(b) The nature of instructional materials and the instructor's experience, including the instructor's length of experience in the field and with the franchisor. State only experience relevant to the subject taught and the franchisor's operations.

(c) Any charges franchisees must pay for training and who must pay travel and living expenses of the training program enrollees.

(d) Who may and who must attend training. State whether the franchisee or other persons must complete the program to the franchisor's satisfaction. If successful completion is required, state how long after signing the agreement or before opening the business the training must be completed. If training is not mandatory, state the percentage of new franchisees that enrolled in the training program during the preceding 12 months.

(e) Whether additional training programs or refresher courses are required.

12. Item 12: Territory.

Disclose:

a. Whether the franchise is for a specific location or a location to be approved by the franchisor.

b. Any minimum territory granted to the franchisee (for example, a specific radius, a distance sufficient to encompass a specified population, or another specific designation).

c. The conditions under which the franchisor will approve the relocation of the franchised business or the franchisee's establishment of additional franchised outlets.

d. Franchisee options, rights of first refusal, or similar rights to acquire additional franchises.

e. Whether the franchisor grants an exclusive territory.

(1) If the franchisor does not grant an exclusive territory, state: "You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control."

(2) If the franchisor grants an exclusive territory, disclose:

(a) Whether continuation of territorial exclusivity depends on achieving a certain sales volume, market penetration, or other contingency, and the circumstances when the franchisee's territory may be altered. Describe any sales or other conditions. State the franchisor's rights if the franchisee fails to meet the requirements.

(b) Any other circumstances that permit the franchisor to modify the franchisee's territorial rights (for example, a population increase in the territory giving the franchisor the right to grant an additional franchise in the area) and the effect of such modifications on the franchisee's rights.

f. For all territories (exclusive and nonexclusive):

(1) Any restrictions on the franchisor from soliciting or accepting orders from consumers inside the franchisee's territory, including:

(a) Whether the franchisor or an affiliate has used or reserves the right to use other channels of distribution such as the Internet, catalog sales, telemarketing, or other direct marketing sales to make sales within the franchisee's territory using the franchisor's principal trademarks.

(b) Whether the franchisor or an affiliate has used or reserves the right to use other channels of distribution such as the Internet, catalog sales, telemarketing, or other direct marketing to make sales within the franchisee's territory of products or services under trademarks different from the ones the franchisee will use under the franchise agreement.

(c) Any compensation that the franchisor must pay for soliciting or accepting orders from inside the franchisee's territory.

(2) Any restrictions on the franchisee from soliciting or accepting orders from consumers outside of his territory, including whether the franchisee has the right to use other channels of distribution such as the Internet, catalog sales, telemarketing, or other direct marketing to make sales outside of his territory.

(3) If the franchisor or an affiliate operates, franchises, or has plans to operate or franchise a business under a different trademark and that business sells or will sell goods or services similar to those the franchisee will offer, describe:

(a) The similar goods and services.

(b) The different trademark.

(c) Whether outlets will be franchisor-owned or -operated.

(d) Whether the franchisor or its franchisees who use the different trademark will solicit or accept orders within the franchisee's territory.

(e) The timetable for the plan.

(f) How the franchisor will resolve conflicts between the franchisor and franchisees and between the franchisees of each system regarding territory, customers, and franchisor support.

(g) The principal business address of the franchisor's similar operating business. If it is the same as the franchisor's principal business address stated in Item 1, disclose whether the franchisor maintains (or plans to maintain) physically separate offices and training facilities for the similar competing business.

13. Item 13: Trademarks.

a. Disclose each principal trademark to be licensed to the franchisee. For this item, "principal trademark" means the primary trademarks, service marks, names, logos, and commercial symbols the franchisee will use to identify the franchised business. It may not include every trademark the franchisor owns.

b. Disclose whether each principal trademark is registered with the United States Patent and Trademark Office. If so, state:

(1) The date and identification number of each trademark registration.

(2) Whether the franchisor has filed all required affidavits.

(3) Whether any registration has been renewed.

(4) Whether the principal trademarks are registered on the Principal or Supplemental Register of the United States Patent and Trademark Office.

c. If the principal trademark is not registered with the United States Patent and Trademark Office, state whether the franchisor has filed any trademark application, including any "intent to use" application or an application based on actual use. If so, state the date and identification number of the application.

d. If the trademark is not registered on the Principal Register of the United States Patent and Trademark Office, state: "We do not have a federal registration for our principal trademark. Therefore, our trademark does not have many legal benefits and rights as a federally registered trademark. If our right to use the trademark is challenged, you may have to change to an alternative trademark, which may increase your expenses."

e. Disclose any currently effective material determinations of the United States Patent and Trademark Office, the Trademark Trial and Appeal Board, or any state trademark administrator or court; and any pending infringement, opposition, or cancellation proceeding. Include infringement, opposition, or cancellation proceedings in which the franchisor unsuccessfully sought to prevent registration of a trademark in order to protect a trademark licensed by the franchisor. Describe how the determination affects the ownership, use, or licensing of the trademark.

f. Disclose any pending material federal or state court litigation regarding the franchisor's use or ownership rights in a trademark. For each pending action, disclose:[8]

(1) The forum and case number.

(2) The nature of claims made opposing the franchisor's use of the trademark or by the franchisor opposing another person's use of the trademark.

(3) Any effective court or administrative agency ruling in the matter.

g. Disclose any currently effective agreements that significantly limit the franchisor's rights to use or license the use of trademarks listed in this section in a manner material to the franchise. For each agreement, disclose:

(1) The manner and extent of the limitation or grant.

(2) The extent to which the agreement may affect the franchisee.

(3) The agreement's duration.

(4) The parties to the agreement.

(5) The circumstances when the agreement may be canceled or modified.

(6) All other material terms.

h. Disclose:

(1) Whether the franchisor must protect the franchisee's right to use the principal trademarks listed in this section, and must protect the franchisee against claims of infringement or unfair competition arising out of the franchisee's use of the trademarks.

(2) The franchisee's obligation to notify the franchisor of the use of, or claims of rights to, a trademark identical to or confusingly similar to a trademark licensed to the franchisee.

(3) Whether the franchise agreement requires the franchisor to take affirmative action when notified of these uses or claims.

(4) Whether the franchisor or franchisee has the right to control any administrative proceedings or litigation involving a trademark licensed by the franchisor to the franchisee.

(5) Whether the franchise agreement requires the franchisor to participate in the franchisee's defense and/or indemnify the franchisee for expenses or damages if the franchisee is a party to an administrative or judicial proceeding involving a trademark licensed by the franchisor to the franchisee, or if the proceeding is resolved unfavorably to the franchisee.

(6) The franchisee's rights under the franchise agreement if the franchisor requires the franchisee to modify or discontinue using a trademark.

i. Disclose whether the franchisor knows of either superior prior rights or infringing uses that could materially affect the franchisee's use of the principal trademarks in the state where the franchised business will be located. For each use of a principal trademark that the franchisor believes is an infringement that could

materially affect the franchisee's use of a trademark, disclose:

(1) The nature of the infringement.

(2) The locations where the infringement is occurring.

(3) The length of time of the infringement (to the extent known).

(4) Any action taken or anticipated by the franchisor.

14. Item 14: Patents, Copyrights, and Proprietary Information.

a. Disclose whether the franchisor owns rights in, or licenses to, patents or copyrights that are material to the franchise. Also, disclose whether the franchisor has any pending patent applications that are material to the franchise. If so, state:

(1) The nature of the patent, patent application, or copyright and its relationship to the franchise.

(2) For each patent:

(a) The duration of the patent.

(b) The type of patent (for example, mechanical, process, or design).

(c) The patent number, issuance date, and title.

(3) For each patent application:

(a) The type of patent application (for example, mechanical, process, or design).

(b) The serial number, filing date, and title.

(4) For each copyright:

(a) The duration of the copyright.

(b) The registration number and date.

(c) Whether the franchisor can and intends to renew the copyright.

b. Describe any current material determination of the United States Patent and Trademark Office, the United States Copyright Office, or a court regarding the patent or copyright. Include the forum and matter number. Describe how the determination affects the franchised business.

c. State the forum, case number, claims asserted, issues involved, and effective determinations for any material proceeding pending in the United States Patent and Trademark Office or any court.[9]

d. If an agreement limits the use of the patent, patent application, or copyright, state the parties to and duration of the agreement, the extent to which the agreement may affect the franchisee, and other material terms of the agreement.

e. Disclose the franchisor's obligation to protect the patent, patent application, or copyright; and to defend the franchisee against claims arising from the franchisee's use of patented or copyrighted items, including:

(1) Whether the franchisor's obligation is contingent upon the franchisee notifying the franchisor of any infringement claims or whether the franchisee's notification is discretionary.

(2) Whether the franchise agreement requires the franchisor to take affirmative action when notified of infringement.

(3) Who has the right to control any litigation.

(4) Whether the franchisor must participate in the defense of a franchisee or indemnify the franchisee for expenses or damages in a proceeding involving a patent, patent application, or copyright licensed to the franchisee.

(5) Whether the franchisor's obligation is contingent upon the franchisee modifying or discontinuing the use of the subject matter covered by the patent or copyright.

(6) The franchisee's rights under the franchise agreement if the franchisor requires the franchisee to modify or discontinue using the subject matter covered by the patent or copyright.

f. If the franchisor knows of any patent or copyright infringement that could materially affect the franchisee, disclose:

(1) The nature of the infringement.

(2) The locations where the infringement is occurring.

(3) The length of time of the infringement (to the extent known).

(4) Any action taken or anticipated by the franchisor.

g. If the franchisor claims proprietary rights in other confidential information or trade secrets, describe in general terms the proprietary information communicated to the franchisee and the terms for use by the franchisee. The franchisor need only describe the general nature of the proprietary information, such as whether a formula or recipe is considered to be a trade secret.

15. Item 15: Obligation to Participate in the Actual Operation of the Franchise Business.

a. Disclose the franchisee's obligation to participate personally in the direct operation of the franchisee's business and whether the franchisor recommends participation. Include obligations arising from any written agreement or from the franchisor's practice.

b. If personal "on-premises" supervision is not required, disclose the following:

(1) If the franchisee is an individual, whether the franchisor recommends on-premises supervision by the franchisee.

(2) Limits on whom the franchisee can hire as an on-premises supervisor.

(3) Whether an on-premises supervisor must successfully complete the franchisor's training program.

(4) If the franchisee is a business entity, the amount of equity interest, if any, that the on-premises supervisor must have in the franchisee's business.

c. Disclose any restrictions that the franchisee must place on its manager (for example, maintain trade secrets, covenants not to compete).

16. Item 16: Restrictions on What the Franchisee May Sell.

Disclose any franchisor-imposed restrictions or conditions on the goods or services that the franchisee may sell or that limit access to customers, including:

a. Any obligation on the franchisee to sell only goods or services approved by the franchisor.

b. Any obligation on the franchisee to sell all goods or services authorized by the franchisor.

c. Whether the franchisor has the right to change the types of authorized goods or services and whether there are limits on the franchisor's right to make changes.

17. Item 17: Renewal, Termination, Transfer, and Dispute Resolution.

Disclose, in the following tabular form, a table that cross-references each enumerated franchise relationship item with the applicable provision in the franchise or related agreement. Title the table "THE FRANCHISE RELATIONSHIP" in capital letters and bold type.

a. Describe briefly each contractual provision. If a particular item is not applicable, state "Not Applicable."

b. If the agreement is silent about one of the listed provisions, but the franchisor unilaterally offers to provide certain benefits or protections to franchisees as a matter of policy, use a footnote to describe the policy and state whether the policy is subject to change.

c. In the summary column for Item 17 c, state what the term "renewal" means for your franchise system, including, if applicable, a statement that franchisees may be asked to sign a contract with materially different terms and conditions than their original contract.

Item 17 Table

THE FRANCHISE RELATIONSHIP

[In bold] This table lists certain important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this disclosure document.

Provision	Section in franchise or other agreement	Summary
a. Length of the franchise term		
b. Renewal or extension of the term		
c. Requirements for franchisee to renew or extend		
d. Termination by franchisee		
e. Termination by franchisor without cause		
f. Termination by franchisor with cause		
g. "Cause" defined - curable defaults		
h. "Cause" defined - noncurable defaults		
i. Franchisee's obligations on termination/nonrenewal		
j. Assignment of contract by franchisor		
k. "Transfer" by franchisee – defined		
l. Franchisor approval of transfer by franchisee		
m. Conditions for franchisor approval of transfer		
n. Franchisor's right of first refusal to acquire franchisee's business		
o. Franchisor's option to purchase franchisee's business		

p. Death or disability of franchisee		
q. Noncompetition covenants during the term of the franchise		
r. Noncompetition covenants after the franchise is terminated or expires		
s. Modification of the agreement		
t. Integration/merger clause		
u. Dispute resolution by arbitration or mediation		
v. Choice of forum		
w. Choice of law		

18. Item 18: Public Figures.

Disclose:

a. Any compensation or other benefit given or promised to a public figure arising from either the use of the public figure in the franchise name or symbol, or the public figure's endorsement or recommendation of the franchise to prospective franchisees.

b. The extent to which the public figure is involved in the management or control of the franchisor. Describe the public figure's position and duties in the franchisor's business structure.

c. The public figure's total investment in the franchisor, including the amount the public figure contributed in services performed or to be performed. State the type of investment (for example, common stock, promissory note).

d. For purposes of this section, a public figure means a person whose name or physical appearance is generally known to the public in the geographic area where the franchise will be located.

19. Item 19: Financial Performance Representations.

a. Begin by stating the following:

The FTC's Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a reasonable basis for the information, and if the information is included in the disclosure document. Financial performance information that differs from that included in Item 19 may be given only if: (i) a franchisor provides the actual records of an existing outlet you are considering buying; or (ii) a franchisor supplements the information provided in this Item 19, for example, by providing information about possible performance at a particular location or under particular circumstances.

b. If a franchisor does not provide any financial performance representation in Item 19, also state:

We do not make any representations about a franchisee's future financial performance or the past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor's management by contacting [name, address, and telephone number], the Federal Trade Commission, and the appropriate state regulatory agencies.

c. If the franchisor makes any financial performance representation to prospective franchisees, the franchisor must have a reasonable basis and written substantiation for the representation at the time the representation is made and must state the representation in the Item 19 disclosure. The franchisor must also disclose the following:

(1) Whether the representation is an historic financial performance representation about the franchise system's existing outlets, or a subset of those outlets, or is a forecast of the prospective franchisee's future financial performance.

(2) If the representation relates to past performance of the franchise system's existing outlets, the material basis for the representation, including:

(a) Whether the representation relates to the performance of all of the franchise system's existing outlets or only to a subset of outlets that share a particular set of characteristics (for example, geographic location, type of location such as free standing vs. shopping center, degree of competition, length of time the outlets have operated, services or goods sold, services supplied by the franchisor, and whether the outlets are franchised or franchisor-owned or -operated).

(b) The dates when the reported level of financial performance was achieved.

(c) The total number of outlets that existed in the relevant period and, if different, the number of outlets that had the described characteristics.

(d) The number of outlets with the described characteristics whose actual financial performance data were used in arriving at the representation.

(e) Of those outlets whose data were used in arriving at the representation, the number and percent that actually attained or surpassed the stated results.

(f) Characteristics of the included outlets, such as those characteristics noted in subdivision c (2)(a) of Item 19, that may differ materially from those of the outlet that may be offered to a prospective franchisee.

(3) If the representation is a forecast of future financial performance, state the material basis and assumptions on which the projection is based. The material assumptions underlying a forecast include significant factors upon which a franchisee's future results are expected to depend. These factors include, for example, economic or market conditions that are basic to a franchisee's operation, and encompass matters affecting, among other things, a franchisee's sales, the cost of goods or services sold, and operating expenses.

(4) A clear and conspicuous admonition that a new franchisee's individual financial results may differ from the result stated in the financial performance representation.

(5) A statement that written substantiation for the financial performance representation will be made available to the prospective franchisee upon reasonable request.

d. If a franchisor wishes to disclose only the actual operating results for a specific outlet being offered for sale, it need not comply with this section, provided the information is given only to potential purchasers of that outlet.

e. If a franchisor furnishes financial performance information according to this section, the franchisor may deliver to a prospective franchisee a supplemental financial performance representation about a particular location or variation, apart from the disclosure document. The supplemental representation must:

(1) Be in writing.

(2) Explain the departure from the financial performance representation in the disclosure document.

(3) Be prepared in accordance with the requirements of subdivision c (1) through (4) of this item.

(4) Be furnished to the prospective franchisee.

20. Item 20: Outlets and Franchisee Information.

a. Disclose, in the following tabular form, the total number of franchised and company-owned outlets for each of the franchisor's last three fiscal years. For this item, "outlet" includes outlets of a type substantially similar to that offered to the prospective franchisee. A sample Item 20a table is attached as Appendix B.

Table No. 1

Systemwide Outlet Summary

For years [--] to [--]

Column 1 Outlet Type	Column 2 Year	Column 3 Outlets at the Start of the Year	Column 4 Outlets at the End of the Year	Column 5 Net Change
Franchised	2004			
	2005			
	2006			
Company-Owned	2004			
	2005			
	2006			
Total Outlets	2004			
	2005			
	2006			

(1) In column 1, include three outlet categories titled "franchised," "company-owned," and "total outlets."

(2) In column 2, state the last three fiscal years.

(3) In column 3, state the total number of each type of outlet operating at the beginning of each fiscal year.

(4) In column 4, state the total number of each type of outlet operating at the end of each fiscal year.

(5) In column 5, state the net change, and indicate whether the change is positive or negative, for each type of outlet during each fiscal year.

b. Disclose, in the following tabular form, the number of franchised and company-owned outlets and changes in the number and ownership of outlets located in each state during each of the last three fiscal years. Except as noted, each change in ownership shall be reported only once in the following tables. If multiple events occurred in the process of transferring ownership of an outlet, report the event that occurred last in time. If a single outlet changed ownership two or more times during the same fiscal year, use footnotes to describe the types of changes involved and the order in which the changes occurred.

(1) Disclose, in the following tabular form, the total number of franchised outlets transferred in each state during each of the franchisor's last three fiscal years. For this item, "transfer" means the acquisition of a controlling interest in a franchised outlet, during its term, by a person other than the franchisor or an affiliate. A sample Item 20 b Table is attached as Appendix C.

Table No. 2

Transfers of Outlets from Franchisees to New Owners (other than the Franchisor)

For years [--] to [--]

Column 1 State	Column 2 Year	Column 3 Number of Transfers
	2004	
	2005	
	2006	
	2004	
	2005	
	2006	
Total	2004	
	2005	
	2006	

(a) In column 1, list each state with one or more franchised outlets.

(b) In column 2, state the last three fiscal years.

(c) In column 3, state the total number of completed transfers in each state during each fiscal year.

(2) Disclose, in the following tabular form, the status of franchisee-owned outlets located in each state for each of the franchisor's last three fiscal years. A sample Item 20 c table is attached as Appendix D.

Table No. 3

Status of Franchised Outlets

For years [--] to [--]

Col. 1 State	Col. 2 Year	Col. 3 Outlets at Start of Year	Col. 4 Outlets Opened	Col. 5 Terminations	Col. 6 Nonrenewals	Col. 7 Reacquired by Franchisor	Col. 8 Ceased Operations-Other Reasons	Col. 9 Outlets at End of the Year
	2004							
	2005							
	2006							
	2004							
	2005							
	2006							
Totals								

(a) In column 1, list each state with one or more franchised outlets.

(b) In column 2, state the last three fiscal years.

(c) In column 3, state the total number of franchised outlets in each state at the start of each fiscal year.

(d) In column 4, state the total number of franchised outlets opened in each state during each fiscal year. Include both new outlets and existing company-owned outlets that a franchisee purchased from the franchisor. (Also report the number of existing company-owned outlets that are sold ~~or granted~~ to a franchisee in Column 7 of Table 4).

(e) In column 5, state the total number of franchised outlets that were terminated in each state during each fiscal year. For purposes of this item, "termination" means the franchisor's termination of a franchise agreement prior to the end of its term and without providing any consideration to the franchisee (whether by payment or forgiveness or assumption of debt).

(f) In column 6, state the total number of nonrenewals in each state during each fiscal year. For purposes of this item, "nonrenewal" occurs when the franchise agreement for a franchised outlet is not renewed at the end of its term.

(g) In column 7, state the total number of franchised outlets reacquired by the franchisor in each state during each fiscal year. For purposes of this item, a "reacquisition" means the franchisor's acquisition for consideration (whether by payment or forgiveness or assumption of debt) of a franchised outlet during its term. (Also report franchised outlets reacquired by the franchisor in column 5 of Table 4).

(h) In column 8, state the total number of outlets in each state not operating as one of the franchisor's outlets at the end of each fiscal year for reasons other than termination, nonrenewal, or reacquisition by the franchisor.

(i) In column 9, state the total number of franchised outlets in each state at the end of the fiscal year.

(3) Disclose, in the following tabular form, the status of company-owned outlets located in each state for each of the franchisor's last three fiscal years. A sample Item 20 d table is attached as Appendix E.

Table No. 4 Status of Company-Owned Outlets For years [--] to [--]							
Col. 1 State	Col. 2 Year	Col. 3 Outlets at Start of the Year	Col. 4 Outlets Opened	Col. 5 Outlets Reacquired From Franchisee	Col. 6 Outlets Closed	Col. 7 Outlets Sold to Franchisee	Col. 8 Outlets at End of the Year
	2004						
	2005						
	2006						
	2004						
	2005						
	2006						
Totals	2004						
	2005						
	2006						

(a) In column 1, list each state with one or more company-owned outlets.

(b) In column 2, state the last three fiscal years.

(c) In column 3, state the total number of company-owned outlets in each state at the start of the fiscal year.

(d) In column 4, state the total number of company-owned outlets opened in each state during each fiscal year.

(e) In column 5, state the total number of franchised outlets reacquired from franchisees in each state during each fiscal year.

(f) In column 6, state the total number of company-owned outlets closed in each state during each fiscal year. Include both actual closures and instances when an outlet ceases to operate under the franchisor's trademark.

(g) In column 7, state the total number of company-owned outlets sold ~~or granted~~ to franchisees in each state during each fiscal year.

(h) In column 8, state the total number of company-owned outlets operating in each state at the end of each fiscal year.

c. Disclose, in the following tabular form, projected new franchised and company-owned outlets. A sample Item 20 e table is attached as Appendix F.

Table No. 5 Projected Openings As Of [Last Day of Last Fiscal Year]			
Column 1 State	Column 2 Franchise Agreements Signed But Outlet Not Opened	Column 3 Projected New Franchised Outlet In The Next Fiscal Year	Column 4 Projected New Company-Owned Outlet In the Next Fiscal Year
Total			

(1) In column 1, list each state where one or more franchised or company-owned outlets are located or are projected to be located.

(2) In column 2, state the total number franchise agreements that had been signed for new outlets to be located in each state as of the end of the previous fiscal year where the outlet had not yet opened.

(3) In column 3, state the total number of new franchised outlets in each state projected to be opened during the next fiscal year.

(4) In column 4, state the total number of new company-owned outlets in each state that are projected to be opened during the next fiscal year.

d. Disclose the names of all current franchisees and the address and telephone number of each of their outlets. Alternatively, disclose this information for all franchised outlets in the state, but if these franchised outlets total fewer than 100, disclose this information for franchised outlets from contiguous states and then the next closest states until at least 100 franchised outlets are listed.

e. Disclose the name, city and state, and current business telephone number, or if unknown, the last known home telephone number of every franchisee who had an outlet terminated, canceled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under the franchise agreement during the most recently completed fiscal year or who has not communicated with the franchisor within 10 weeks of the disclosure document issuance date.[10] State in immediate conjunction with this information: "If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system."

f. If a franchisor is selling ~~or granting~~ a previously-owned franchised outlet now under its control, disclose the following additional information for that outlet for the last five fiscal years. This information may be attached as an addendum to a disclosure document, or, if disclosure has already been made, then in a supplement to the previously furnished disclosure document.

(1) The name, city and state, current business telephone number, or if unknown, last known home telephone number of each previous owner of the outlet;

(2) The time period when each previous owner controlled the outlet;

(3) The reason for each previous change in ownership (for example, termination, nonrenewal, voluntary transfer, ceased operations); and

(4) The time period(s) when the franchisor retained control of the outlet (for example, after termination, nonrenewal, or reacquisition).

g. Disclose whether franchisees signed confidentiality clauses during the last three fiscal years. If so, state the following: "In some instances, current and former franchisees sign provisions restricting their ability to speak openly about their experience with [name of franchise system]. You may wish to speak with current and former franchisees, but be aware that not all such franchisees will be able to communicate with you." Franchisors may also disclose the number and percentage of current and former franchisees who during each of the last three fiscal years signed agreements that include confidentiality clauses and may disclose the circumstances under which such clauses were signed.

h. Disclose, to the extent known, the name, address, telephone number, email address, and website address (to the extent known) of each trademark-specific franchisee organization associated with the franchise system being offered, if such organization:

(1) Has been created, sponsored, or endorsed by the franchisor. If so, state the relationship between the organization and the franchisor (for example, the organization was created by the franchisor, sponsored by the franchisor, or endorsed by the franchisor).

(2) Is incorporated or otherwise organized under state law and asks the franchisor to be included in the franchisor's disclosure document during the next fiscal year. Such organizations must renew their request on an annual basis by submitting a request no later than 60 days after the close of the franchisor's fiscal year. The franchisor has no obligation to verify the organization's continued existence at the end of each fiscal year. Franchisors may also include the following statement: "The following independent franchisee organizations have asked to be included in this disclosure document."

21. Item 21: Financial Statements.

a. Include the following financial statements prepared according to United States generally accepted accounting principles, as revised by any future United States government mandated accounting principles, or as permitted by the Securities and Exchange Commission. Except as provided in subdivision b of this item, these financial statements must be audited by an

independent certified public accountant using generally accepted United States auditing standards. Present the required financial statements in a tabular form that compares at least two fiscal years.

(1) The franchisor's balance sheet for the previous two fiscal year-ends before the disclosure document issuance date.

(2) Statements of operations, stockholders equity, and cash flows for each of the franchisor's previous three fiscal years.

(3) Instead of the financial disclosures required by subdivisions a (1) and (2) of this item, the franchisor may include financial statements of any of its affiliates if the affiliate's financial statements satisfy subdivisions a (1) and (2) of this item and the affiliate absolutely and unconditionally guarantees to assume the duties and obligations of the franchisor under the franchise agreement. The affiliate's guarantee must cover all of the franchisor's obligations to the franchisee, but need not extend to third parties. If this alternative is used, attach a copy of the guarantee to the disclosure document.

(4) When a franchisor owns a direct or beneficial controlling financial interest in a subsidiary, its financial statements should reflect the financial condition of the franchisor and its subsidiary.

(5) Include separate financial statements for the franchisor and any subfranchisor, as well as for any parent that commits to perform postsale obligations for the franchisor or guarantees the franchisor's obligations. Attach a copy of any guarantee to the disclosure document.

b. A start-up franchise system may phase-in the use of the financial statements specified in subdivisions a (1) and (2) of this item by providing, at a minimum, the following statements at the indicated times:

(1) The franchisor's first partial or full fiscal year selling ~~or granting~~ franchises.	An audited opening balance sheet.
(2) The franchisor's second fiscal year selling ~~or granting~~ franchises.	Audited balance sheet opinion as of the end of the first partial or full fiscal year selling ~~or granting~~ franchises.
(3) The franchisor's third and subsequent fiscal years selling ~~or granting~~ franchises.	All required financial statements for the previous fiscal year, plus any previously disclosed audited statements that still must be disclosed according to subdivisions a (1) and (2) of this item.

(4) Start-up franchisors may phase-in the disclosure of all financial statements required in subdivisions a (1) and (2) of this item, provided the franchisor:

(a) Prepares audited statements of operations, stockholders equity, and cash flows as soon as practicable.

(b) Prepares all unaudited statements in a format that conforms as closely as possible to audited statements.

(c) Includes one or more years of unaudited statements of operations or clearly and conspicuously discloses in this section that the franchisor has not been in business for three years or more, and cannot include all financial statements required in subdivisions a (1) and (2) of this item.

22. Item 22: Contracts.

Attach a copy of all proposed agreements regarding the franchise offering, including the franchise agreement and any lease, options, and purchase agreements.

23. Item 23: Receipts.

Include two copies of the following detachable acknowledgment of receipt in the following form as the last pages of the disclosure document:

a. State the following:

Receipt

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If [name of franchisor] offers you a franchise, it must provide this disclosure document to you 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale ~~or grant~~.

If [name of franchisor] does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and [state agency].

b. Disclose the name, principal business address, and telephone number of each franchise seller offering the franchise.

c. State the issuance date.

d. If not disclosed in Item 1, state the name and address of the franchisor's registered agent authorized to receive service of process.

e. State the following:

I received a disclosure document dated that included the following Exhibits:

f. List the title(s) of all attached Exhibits.

g. Provide space for the prospective franchisee's signature and date.

h. Franchisors may include any specific instructions for returning the receipt (for example, street address, email address, facsimile telephone number).

Appendix A: Sample Item 10 Table

Summary of Financing Offered

Item Financed	Source of Financing	Down Payment	Amount Financed	Term (Yrs)	Interest Rate	Monthly Payment	Prepay Penalty	Security Required	Liability Upon Default	Loss of Legal Right on Default
Initial Fee										
Land/ Constr										
Leased Space										
Equip. Lease										
Equip. Purchase										
Opening Inventory										
Other Financing										

Appendix B: Sample Item 20(1) Table – Systemwide Outlet Summary

Systemwide Outlet Summary

For years 2004 to 2006

Column 1 Outlet Type	Column 2 Year	Column 3 Outlets at the Start of the Year	Column 4 Outlets at the End of the Year	Column 5 Net Change
Franchised	2004	859	1,062	+203

	2005	1,062	1,296	+234
	2006	1,296	2,720	+1,424
Company Owned	2004	125	145	+20
	2005	145	76	-69
	2006	76	141	+65
Total Outlets	2004	984	1,207	+223
	2005	1,207	1,372	+165
	2006	1,372	2,861	+1,489

Appendix C: Sample Item 20(2) Table – Transfers of Franchised Outlets

Transfers of Outlets from Franchisees to New Owners (other than the Franchisor)

For years 2004 to 2006

Column 1 State	Column 2 Year	Column 3 Number of Transfers
NC	2004	1
	2005	0
	2006	2
SC	2004	0
	2005	0
	2006	2
Total	2004	1
	2005	0
	2006	4

Appendix D: Sample Item 20(3) Table – Status of Franchise Outlets

Status of Franchise Outlets

For years 2004 to 2006

Col. 1 State	Col. 2 Year	Col. 3 Outlets at Start of Year	Col. 4 Outlets Opened	Col. 5 Terminations	Col. 6 Non-Renewals	Col. 7 Reacquired by Franchisor	Col. 8 Ceased Operations-Other Reasons	Col. 9 Outlets at End of the Year
AL	2004	10	2	1	0	0	1	10
	2005	11	5	0	1	0	0	15
	2006	15	4	1	0	1	2	15
AZ	2004	20	5	0	0	0	0	25
	2005	25	4	1	0	0	2	26

	2006	26	4	0	0	0	0	30
Totals	2004	30	7	1	0	0	1	35
	2005	36	9	1	1	0	2	41
	2006	41	8	1	0	1	2	45

Appendix E: Sample Item 20(4) Table – Status of Company-Owned Outlets

Status of Company-Owned Outlets

For years 2004 to 2006

Col. 1 State	Col 2 Year	Col. 3 Outlets at Start of the Year	Col. 4 Outlets Opened	Col. 5 Outlets Reacquired From Franchisees	Col. 6 Outlets Closed	Col. 7 Outlets Sold to Franchisees	Col. 8 Outlets at End of the Year
NY	2004	1	0	1	0	0	2
	2005	2	2	0	1	0	3
	2006	3	0	0	3	0	0
OR	2004	4	0	1	0	0	5
	2005	5	0	0	2	0	3
	2006	3	0	0	0	1	2
Totals	2004	5	0	2	0	0	7
	2005	7	2	0	3	0	6
	2006	6	0	0	3	1	2

Appendix F: Sample Item 20(5) Table – Projected New Franchised Outlets

Projected New Franchised Outlets

As of December 31, 2006

Column 1 State	Column 2 Franchise Agreements Signed But Outlet Not Opened	Column 3 Projected New Franchised Outlet in the Next Fiscal Year	Column 4 Projected New Company-Owned Outlets in the Next Fiscal Year
CO	2	3	1
NM	0	4	2
Total	2	7	3

[1] Franchisors may include a summary opinion of counsel concerning any action if counsel consent to use the summary opinion and the full opinion is attached to the disclosure document.

[2] If a settlement agreement must be disclosed in this item, all material settlement terms must be disclosed, whether or not the agreement is confidential. However, franchisors need not disclose the terms of confidential settlements entered into before commencing franchise sales.

[3] If fees may increase, disclose the formula that determines the increase or the maximum amount of the increase. For example, a percentage of gross sales is acceptable if the franchisor defines the term "gross sales."

[4] Franchisors may include the reason for the requirement. Franchisors need not disclose in this item the purchase or lease of goods or services provided as part of the franchise without a separate charge (such as initial training, if the cost is included in the franchise fee). Describe such fees in Item 5. Do not disclose fees already described in Item 6.

[5] Take figures from the franchisor's most recent annual audited financial statement required in Item 21. If the entity deriving the income is an affiliate, disclose the sources of information used in computing revenues.

[6] Indirect offers of financing include a written arrangement between a franchisor or its affiliate and a lender, for the lender to offer financing to a franchisee; an arrangement in which a franchisor or its affiliate receives a benefit from a lender in exchange for financing a franchise purchase; and a franchisor's guarantee of a note, lease, or other obligation of the franchisee.

[7] Include sample copies of the financing documents as an exhibit to Item 22. Cite the section and name of the document containing the financing terms and conditions.

[8] The franchisor may include an attorney's opinion relative to the merits of litigation or of an action if the attorney issuing the opinion consents to its use. The text of the disclosure may include a summary of the opinion if the full opinion is attached and the attorney issuing the opinion consents to the use of the summary.

[9] If counsel consents, the franchisor may include a counsel's opinion or a summary of the opinion if the full opinion is attached.

[10] Franchisors may substitute alternative contact information at the request of the former franchisee, such as a home address, post office address, or a personal or business email address.

VA.R. Doc. No. R09-1785; Filed June 18, 2009, 9:45 a.m.

TITLE 23. TAXATION

DEPARTMENT OF TAXATION

Fast-Track Regulation

Title of Regulation: **23VAC10-210. Retail Sales and Use Tax (amending 23VAC10-210-310).**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

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

Effective Date: September 19, 2009.

Agency Contact: Todd Gathje, Analyst, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2301, FAX (804) 371-2355, or email todd.gathje@tax.virginia.gov.

Basis: Section 58.1-203 of the Code of Virginia provides the tax commissioner the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department of Taxation.

Purpose: Churches have the option of using the general nonprofit entity sales tax exemption provided for under § 58.1-609.11 of the Code of Virginia or the self-issued exemption certificate available only to churches pursuant to § 58.1-609.10 of the Code of Virginia using Form ST-13A, Certificate of Exemption. This action amends the regulation governing the use of the self-issued exemption certificate available only to churches pursuant to § 58.1-609.10 of the Code of Virginia using Form ST-13A, Certificate of Exemption. This regulatory action is necessary to ensure a predictable and adequate revenue stream for the government to provide for the health, safety, and welfare of its citizens.

Chapters 757 and 758 of the 2003 Acts of Assembly created § 58.1-609.11 of the Code of Virginia, which simplified the nonprofit exemption process and enabled more charitable organizations to take advantage of the exemption, and created an administrative process to qualify nonprofit organizations for general sales and use tax exemptions. Beginning on July 1, 2004, nonprofit organizations were permitted to apply online for a retail sales and use tax exemption, via Nonprofit Online, a quick, efficient and secure way created and developed by TAX for organizations to apply for a Virginia sales and use tax exemption for the first time or renew their exemption certificate (https://www.npo.tax.virginia.gov). Under the new law, any organization that is exempt under IRC § 501(c)(3) and (4), provided they are organized for charitable purchases, is permitted to apply to TAX to obtain this exemption if they meet all of the statutory criteria. This

exemption provides a broad exemption for nonprofit organizations and eliminates the process of seeking an exemption through legislature.

However, many churches continue to use the self-issued exemption certificate available only to churches pursuant to subdivision 16 of § 58.1-609.10 of the Code of Virginia using Form ST-13A, Certificate of Exemption. This exemption was originally a narrow exemption, but it has been expanded greatly over time. Prior to 2006, the exemption explicitly excluded tangible personal property that is used in any form for recording and reproducing services from the list of items that were covered under the exemption. Legislation enacted by the General Assembly (Chapter 338 of the 2006 Acts of Assembly) added tangible personal property used by a church for recording and reproducing services to the list of exempt items. Legislation enacted by the General Assembly (Chapter 758 of the 2007 Acts of Assembly) added language that exempts property used in caring for or maintaining property owned by a church including, but not limited to, mowing equipment and building materials installed by a church, and for which the church does not contract with a person or entity to have installed in a public church building. The purpose of this action is to update the regulation relating to churches to conform to these statutory changes.

Rationale for Fast-Track Process: Revising the current regulation to include language that reflects current legislation is not expected to be controversial.

Substance: This regulation will be revised to clarify the application of the sales and use tax to churches, which are permitted to continue to use their self-issued exemption certificates, rather than apply for new exemption certificates from the Department of Taxation under the new nonprofit exemption process, and to include as exempt from the retail sales and use tax a church's purchase of tangible personal property used in any form for recording and reproducing services and caring for or maintaining property owned by a church including, but not limited to, mowing equipment and building materials installed by a church, and for which the church does not contract with a person or entity have installed in a public church building. The regulation will also be revised to update the list of examples of tangible personal property exempt from sales and use tax.

Issues: The regulatory action poses no disadvantages to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Department of Taxation (Department) proposes several amendments to the Retail Sales and Use Tax regulation section (23 VAC 10-210-310) on tax exemptions for churches.[1] There have been several statutory changes since this regulation was last amended. All proposed changes to the regulation are either straight from current statutes, repeat language already in other regulations, or are merely clarifying language and do not change requirements. Proposed changes include exempting the following from taxation: 1) items used in recording and reproducing religious worship services (Chapter 338 of the 2006 Acts of Assembly), and 2) property used in caring for or maintaining property owned by the church including, but not limited to, mowing equipment and building materials installed by a church, and for which the church did not contract with a person or entity to have installed, in a public church building; and other items of tangible personal property used in religious worship services. The proposed regulation also delineates the differences between tax exemptions for churches and other non-profit entities.

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

Estimated Economic Impact. The current regulation is inconsistent with parts of the Code of the Virginia. When statutes and regulations conflict, the statutes prevail. Since all proposed changes are either straight from statute, repeat language already in other regulations, or are merely clarifying language and do not change requirements, the proposed amendments do not change any requirements for the public and thus do not produce any cost. The proposed amendments will be beneficial for the public in that there will be less confusion on the ruling law concerning tax exemptions for churches due to the removal of inapplicable language and the addition of clarifying language. Therefore, the proposed amendments create net benefit for the public.

Businesses and Entities Affected. The proposed amendments affect nonprofit religious organizations in Virginia.

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 affect small businesses.

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

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36

(06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

[1] Church is defined as a nonprofit religious organization, regardless of faith, that would be considered a church under the standards promulgated by the Internal Revenue Service for federal income tax purposes (i) that has been specifically recognized by the Internal Revenue Service as being exempt from taxation under § 501(c)(3) of the Internal Revenue Code or (ii) whose real property is exempt from local real property taxation under § 58.1-3606 of the Code of Virginia.

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:

This regulatory action makes numerous substantive amendments relating to churches that reflect legislative changes. Changes include amending the regulation with respect to the exemption allowed for items used in recording and reproducing religious worship services; property used in caring for or maintaining property owned by the church including, but not limited to, mowing equipment and building materials installed by a church and for which the church did not contract with a person or entity to have installed in a public church building; and other items of tangible personal property used in religious worship services. This regulation also explains the differences between this exemption and the nonprofit entity exemption.

23VAC10-210-310. Churches.

~~A. Generally. A nonprofit church is entitled to an exemption from the sales and use tax on certain purchases. In order to qualify for this exemption, a church must have received determination that it is either: (i) exempt from taxation under § 501(c)(3) of the Internal Revenue Code; or (ii) exempt from local real property taxation under § 58.1-3606 of the Code of Virginia.~~

~~The exemption extends only to purchases by a nonprofit church of tangible personal property (except that used in recording and reproducing religious worship services) for use:~~

~~1. in religious worship services by a congregation or church membership while meeting together in a single location, and~~

~~2. in libraries, offices, meeting or counseling rooms or other rooms in the public church buildings used in carrying out the work of the church and its related ministries, including kindergarten, elementary and secondary schools.~~

~~When purchasing an item qualifying for exemption, a church must furnish the supplier a properly completed Form ST-13A, Certificate of Exemption.~~

~~B. Religious worship service. The term "religious worship service" includes regularly scheduled church services as well as weddings, bar mitzvahs, bat mitzvahs, baptisms, christenings, funerals, and special services conducted during religious holidays. The following property used in the worship service may be purchased exempt from the tax. This list is exemplary and not all inclusive.~~

~~Acolyte robes~~

~~Altar cushions and cloths~~

~~Baptism, marriage, and membership certificates~~

~~Baptismal font~~

~~Bibles and Bible stands~~

~~Bulletins or programs (including paper and ink used to print these)~~

~~Candles and candelabra used at the location of the worship service~~

~~Choir robes~~

~~Communion supplies and tables~~

~~Flags used at the location of the worship service~~

~~Flowers and plants, live or artificial, and accessories thereto used at the~~

~~location of the worship service~~

~~Funeral pall~~

~~Hymnals and hymnal racks~~

~~Light bulbs used at the location of the worship service~~

~~Microphones and public address system used in the worship service except~~

~~when incorporated into realty~~

~~Musical instruments used in the worship service (e.g., organ, piano, hand~~

~~bells)~~

~~Name tags for ushers and guests, and attendance records~~

~~Offering envelopes~~

~~Pews, cushions, chairs or other seating systems~~

~~Portable heaters and fans and window air conditioners used at the location~~

~~of the worship service~~

~~Prayer books~~

~~Pulpit, lectern, pulpit lamp~~

~~Rosaries, crosses, crucifixes~~

~~Carpeting used at the location of the worship services (except glued down~~

~~carpeting)~~

~~Sheet music~~

~~Systems to assist persons who are hearing impaired~~

~~Tallithim~~

~~Torahs~~

~~Vestments for ecclesiastical celebrants~~

~~Wafers, bread, wine, grape juice used in communion service~~

~~Yarmulkes~~

~~C. Other exempt purchases. Some examples of property which is exempt when used in carrying out the work of the church and its related ministries are administrative supplies (letterhead, envelopes) and equipment, cleaning supplies and equipment, fuel oil, food consumed on the premises and gifts for distribution at activities held in the public church buildings.~~

~~D. Taxable purchases. The following property is taxable because it is not used in rooms in the public church buildings used in carrying out the work of the church and its related ministries or because it is affixed to or has become a part of the real estate. The list is exemplary and not all inclusive.~~

~~Any property used in the parsonage or on church trips, retreats, picnics or similar outings outside a church building~~

~~Any property used in maintenance of church grounds, including without limitation lawn mowers, grass seed and fertilizer~~

~~Tool sheds and picnic shelters~~

~~Baptisteries, stained glass windows, lighting fixtures and other property which when installed becomes a part of real estate~~

~~Bulletins, programs or newsletters which are printed outside the public church building (except those used in the religious worship service)~~

~~Construction and building materials~~

~~Gifts for distribution outside the public church buildings (for example, food baskets)~~

~~Heating and air conditioning equipment which is a part of real estate~~

~~Kitchen equipment which is a part of real estate~~

~~Property used in any manner for recording or reproducing religious worship services~~

~~Repair parts, accessories, oil and similar items for use in motor vehicles~~

~~If a supplier fails to collect the tax on any taxable purchases, the church must report and pay the use tax on Consumer's Use Tax Return, Form ST-7.~~

~~In order to qualify for exemption, tangible personal property must be purchased by, invoiced to and paid for directly by the nonprofit church. Purchases by the minister from his own funds, purchases by affiliated religious associations, and purchases by church members or others for donation to the church are subject to the tax.~~

~~The exemption does not extend to sales by the nonprofit church. (See 23VAC10-210-1070 through 23VAC10-210-1072.)~~

~~23VAC10-210-1070 through 23VAC10-210-1072 and 23VAC10-210-4020 address purchases for use or consumption by nonprofit kindergartens, primary and secondary schools.~~

A. Definitions.

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

"Carrying out the work of the church and its related ministries" means engaging in activities that communicate or spread the religious teachings and practices of a church.

"Church" means a nonprofit religious organization, regardless of faith, that would be considered a church under the standards promulgated by the Internal Revenue Service for federal income tax purposes (i) that has been specifically recognized by the Internal Revenue Service as being exempt from taxation under § 501(c)(3) of the Internal Revenue Code or (ii) whose real property is exempt from local real property taxation under § 58.1-3606 of the Code of Virginia. The term "church" includes any departments, regular schools of religious education, and other activities of a church that are not separate legal or business entities, including kindergartens, elementary and secondary schools, preschools,

nurseries, and day care centers. The term "church" does not include broadcasting television organizations, such as evangelical television and radio ministries, missionaries, political action committees (PACs), affiliated entities separately incorporated from a nonprofit religious organization, and camps and conference centers. However, a limited exemption is available to camps and conference centers as set forth in subsection F of this section.

"Church department" means any administrative division of a church used in carrying out the work and related ministries of the church. This term includes, but is not limited to, boards; committees; councils; men's, women's or youth ministries; and outreach ministries of the church.

"Public church building" means a building, the primary purpose of which is to house the regularly scheduled worship services of the church and those adjacent offices and buildings at a single location in which activities are conducted to carry out the work of the church and its related ministries.

"Regular school of religious education" means any program instituted by a church to provide regularly scheduled classes on the teaching of the church and includes, but is not limited to, Sunday school, catechism, Hebrew school, vacation Bible school, and Bible study classes.

"Religious worship service" means regularly scheduled church services and includes, but is not limited to, weddings, bar mitzvahs, bat mitzvahs, baptisms, christenings, funerals, and special services conducted during religious holidays, when conducted at the public church building.

B. Overview. This section addresses the sales and use tax exemption provided to churches pursuant to § 58.1-609.10 of the Code of Virginia using Form ST-13A, Certificate of Exemption. In general, a church is entitled to an exemption from the sales and use tax on certain purchases of tangible personal property for use in:

1. Religious worship services by a congregation or church membership while meeting together in a single location;

2. Libraries, offices, meeting or counseling rooms, kitchens, or other rooms in the public church buildings used in carrying out the work of the church and its related ministries, including kindergarten, elementary and secondary schools, preschools, nurseries, and day care centers;

3. Recording and reproducing church services; and

4. Caring for or maintaining property owned by the church.

Churches also have the option of using the general nonprofit entity sales tax exemption provided for under § 58.1-609.11 of the Code of Virginia. In order to obtain the general nonprofit entity exemption, the church must apply to the Department of Taxation and receive a Retail Sales and Use Tax Certificate of Exemption. This section is applicable only to the self-issued exemption for churches pursuant to subdivision 16 of § 58.1-609.10 of the Code of Virginia using Form ST-13, Certificate of Exemption. It does not apply to the general nonprofit entity sales tax exemption provided for under § 58.1-609.11 of the Code of Virginia.

C. Exercising the exemption. In order to qualify for exemption, tangible personal property must be purchased by, invoiced to, and paid for directly by the church. If a minister, church member, or other church worker purchases tangible personal property on behalf of the church using his personal funds, the purchase is taxable even if reimbursed to the person by the church. A personal check is payment made by an individual and not by the church. Cash payment provides no proof that the church makes direct payment to the dealer of the merchandise. If a supplier fails to collect the tax on any taxable purchase, the church must report and pay the use tax on Form ST-7, Consumer's Use Tax Return.

When purchasing an item qualifying for exemption, a church must furnish to the supplier a properly completed Form ST-13A, Certificate of Exemption. This self-issued certificate of exemption is limited to tangible personal property specified in § 58.1-609.10 of the Code of Virginia.

D. Exempt purchases.

1. Purchases for use in religious worship services and in public church buildings in carrying out the work of the church and its related ministries. The following tangible personal property may be purchased exempt from the tax when purchased by the church for use in religious worship services by a congregation or church membership while meeting together in a single location and for use in public church buildings in carrying out the work of the church and its related ministries. The list is exemplary and not all inclusive.

a. Acolyte robes;

b. Administrative supplies (letterheads, envelopes, office supplies, etc.);

c. Altar cushions and cloths;

d. Baptism, marriage, and membership certificates;

e. Baptismal font;

f. Baptistries;

g. Bibles and Bible stands;

h. Bulletins, programs, newspapers, and newsletters that do not contain paid advertising (including paper and ink used to print these);

i. Candles and candelabra;

j. Choir robes;

k. Communion supplies and tables;

l. Curtains and flags;

m. Flowers and plants, live or artificial, and accessories thereto;

n. Fuel oil;

o. Funeral pall;

p. Gifts, including food, for distribution outside the public church building;

q. Hymnals and hymnal racks;

r. Kitchen equipment that is not incorporated into realty;

s. Musical instruments (e.g., organ, piano, hand bells, drums, brass instruments, woodwind instruments, etc.);

t. Name tags for ushers and guests, and attendance records;

u. Offering envelopes;

v. Office machinery and equipment;

w. Pews, cushions, chairs, and other seating systems;

x. Portable heaters, and fans and window air conditioners used at the location of the worship service;

y. Prayer books;

z. Pulpit, lectern, pulpit lamp;

aa. Rosaries, crosses, crucifixes;

bb. Rugs and carpeting not affixed to the realty;

cc. Sheet music;

dd. Systems to assist persons who are hearing-impaired

ee.Tallithim;

ff. Torahs;

gg. Vestments for ecclesiastical celebrants;

hh. Wafers, bread, wine, grape juice used in communion service; and

ii. Yarmulkes.

2. Purchases for recording and reproducing church services. Equipment, tools, supplies, or other tangible personal property used in any form of recording or reproducing of church services can be purchased exempt of the retail sales and use tax. Recording and reproduction items shall include, but are not limited to, the following:

a. Amplifiers, microphones, speakers, and wires;

b. Audiovisual recording devices;

c. Tools and testing equipment;

d. Tape or disk duplicating devices;

e. Audiovisual cameras;

f. Television broadcasting cameras;

g. Radio and television transmitting devices; and

h. Photographic cameras, film, developing supplies.

3. Property used in caring for or maintaining property owned by the church.

a. Tangible personal property that is purchased for use in caring for or maintaining property owned by the church is exempt from the retail sales and use tax. Such property shall include, but not be limited to, the following:

(1) Mowing equipment including but not limited to, lawn mowers, baggers, weed-eaters, edgers, and replacement parts (lawn mower blades, tires, wheels, lights, spark plugs, filters, other mechanical components, etc.);

(2) Ladders;

(3) Vacuums;

(4) Mops;

(5) Buckets;

(6) Janitorial supplies;

(7) Pressure washers;

(8) Rakes;

(9) Brooms;

(10) Cleaning equipment and supplies;

(11) Light bulbs

(12) Leaf blowers;

(13) Tools (hammers, drills, saws, screwdrivers, knives, paint brushes, nails, screws, etc.);

(14) Property used in maintenance of church grounds including, but not limited to, grass seed, trees, shrubs, and fertilizer; and

(15) Repair parts, accessories, oil, and similar items for use in motor vehicles owned by the church, even if such motor vehicles are not used exclusively for church-related activities.

b. Certain building materials. Building materials that are installed in the public church buildings that are used in carrying out the work of the church and its related ministries may be purchased by the church exempt of the retail sales and use tax, provided such equipment is installed by the church and the church does not contract with a person or entity to have such property installed. Building materials shall include, but not be limited to, the following:

(1) Wood products (lumber, plywood, moldings, etc.);

(2) Drywall;

(3) Flooring (hardwood floors, laminate, vinyl, tile, carpet, etc.);

(4) Paint;

(5) Kitchen and bathroom sinks;

(6) Toilets;

(7) Electrical materials (wires, receptacles, light switches, etc.);

(8) Telephone wires;

(9) Cable television wires;

(10) Roofing materials (shingles or other types of roofing, gutters, roofing nails, etc.);

(11) Siding (aluminum, wood, vinyl, stone, brick, stucco, etc.);

(12) Masonry materials (cinderblocks, bricks or stones, concrete mix, etc.);

(13) Insulation;

(14) Windows;

(15) Doors, door handles, and door locks;

(16) Plumbing materials (pipes, septic systems, garbage disposals, etc.); and

(17) Cabinets, counters, and countertops.

E. Taxable purchases.

1. Generally. Tangible personal property purchased by a church is generally taxable when it is (i) not used in religious worship services by a congregation or church membership while meeting in a single location; (ii) not used in sanctuaries, libraries, offices, meeting or counseling rooms, or other rooms in the public church buildings used in carrying out the work of the church and its related ministries; or (iii) used by separate legal or business entities that may be associated with the church.

2. Construction and building materials furnished to contractors.

a. If building materials, kitchen equipment, heating and air conditioning equipment, tool sheds, and picnic shelters are furnished by the church to a contractor for incorporation in real estate, and the church did not pay the tax on the materials, the contractor, as the user and consumer of the materials, must pay the use tax directly to the department based on the fair market value of the materials used, irrespective of whether or not any right, title, or interest in the materials become vested in the contractor.

b. A baptistry that will be incorporated into real estate at the public church building and used in the religious services of a church is exempt from the tax whether purchased by the church or the contractor.

3. Examples of other taxable purchases. Other taxable purchases are described in the following list, which is exemplary and not all inclusive.

a. Any property used on church trips, picnics, or similar outings outside a public church building; or

b. Bulletins, programs, newspapers, and newsletters that contain paid advertising (including paper and ink used in printing).

F. Camps and conference centers.

1. Church-related activities.

a. Purchases. The tax does not apply to purchases of food and beverages, disposable serving items (such as paper plates, cups, napkins, plastic forks, spoons, and knives), cleaning supplies, and teaching materials used and consumed in operating camps or conference centers by a church or an organization composed of churches that are exempt from the sales and use tax and that are used in carrying out the work of the church and its related ministries. The purchase may be made exempt of the tax by the church or the camp or conference center using Form ST-13A, Certificate of Exemption.

Example 1: A church organization that is composed of a number of church congregations allows one of its church affiliates to hold a youth camp at its conference facilities located in Virginia in order to educate the participants in the church's religious teachings. The church organization purchases food, disposable serving items, and teaching materials that will be given to the participants in the youth camp. In addition, cleaning supplies are purchased for maintaining the facilities. The purchase of food, disposable serving items, teaching materials, and cleaning supplies provided by the church organization would be exempt from the tax.

b. Sales.

(1) Rooms, lodgings, and accommodations. When a church or organization composed of churches operates a camp or conference center and makes separate charges for room rentals, lodging, and accommodations, the charges are taxable as provided in 23VAC10-210-730. The church or organization must register as a dealer, collect the tax on the amount of the charge, and remit the tax to the department. Tangible personal property used and consumed in providing rooms, lodging, and accommodations is taxable at the time of purchase.

(2) Meals. When a church or organization composed of churches operates a camp or conference center and sells

meals to participants, the sales price of meals are taxable as provided in 23VAC10-210-930. The church or organization must register as a dealer, collect the tax on the amount of the charge, and remit the tax to the department. However, the food provided in the meals, as well as paper placemats, plastic silverware, and similar items furnished with the meals and disposed of after the use by only one person, may be purchased exempt of tax under a resale exemption certificate.

(3) Camp fees. When a church or organization composed of churches operates a camp and charges the participants a camp fee that covers expenses incurred to provide meals, lodging, and camp activities, the camp fee is tax exempt. Further, the church or organization carrying out the work of the ministry may purchase the items described in subdivision 1 a of this subsection exempt from the tax.

Example 2: A nonprofit organization composed of nonprofit churches operates a retreat facility. The churches that comprise this nonprofit organization may purchase food items for the consumption of participants at the retreat facility exempt from the tax. Any church associated with the nonprofit organization may also purchase food exempt for resale, but the subsequent sale of that food to participants is taxable. A church that is not associated with the nonprofit organization and that purchases food items for consumption while using the retreat facility must pay retail sales and use tax.

2. Nonchurch-related activities. When food, disposable serving items, teaching materials, or cleaning supplies are purchased by a church or organization of churches for use in camps and conference centers for nonchurch-related activities, they are subject to the sales and use tax in the same manner of other providers of meals and accommodations. Nonchurch-related activities would include, but are not limited to, the renting of the facility for conferences, retreats, etc., by businesses, business groups, governmental organizations, and civic groups.

G. Donations of tangible personal property to churches. A church is exempt from the use tax on donations of tangible personal property that it receives from individuals, businesses, and other organizations. Persons making such donations are liable for the tax not previously paid on the cost price of the donated items unless those items are withdrawn from inventory, as provided in subdivision 15 of § 58.1-609.10 of the Code of Virginia or otherwise exempt from the tax.

H. Affiliated organizations.

1. Generally. Tangible personal property purchased by affiliated religious associations or corporations, such as political action committees (PACs) and separately organized broadcasting ministries, is taxable.

2. Separate legal and business entities. Kindergartens, primary schools, secondary schools, preschools, nurseries, day care centers, and similar activities held in the public church buildings that carry out the work and ministry of the church and that are not separate legal or business entities are generally exempt from the tax on the purchases of tangible personal property. Tangible personal property purchased for an activity that is a separate legal or business entity is taxable. Although not all inclusive, the following factors considered as a whole are used to determine that an activity is a separate legal or business entity from the church that would not qualify for the exemption:

a. The activity is a separate corporation from the church;

b. The federal identification number of the activity is different from the church;

c. Payroll and other expenses of the activity are paid out of separate bank accounts;

d. Activities are located at a different location from the public church building; and

e. Activities are not subject to the authority or control of the church.

However, preschools, primary schools, and secondary schools that are separate legal and business entities from the church may qualify for a sales and use tax exemption pursuant to § 58.1-609.11 of the Code of Virginia.

Example 3: As part of its education ministry to inner city youth, a church operates a child day care center out of its public church buildings. The center's federal identification number is the same as the church, pays its expenses out of the church's checking account, and functions under the authority and control of the church. Tangible personal property purchased by the center would qualify for the church exemption since the center is not considered a separate legal or business entity from the church.

Example 4: Facts are the same as Example 3, except that the center has a separate federal identification number and pays is expenses out of a separate checking account. Tangible personal property purchased by the center would continue to be exempt.

Example 5: Facts are the same as Example 3, except that the center is a separate nonprofit corporation that is still affiliated with the church, has a separate federal identification number, and pays its expenses out of a separate checking account. Even though the center is located in the public church building, tangible personal property purchased by the center is taxable since the center is a separate legal entity from the church.

Example 6: Facts are the same as Example 3, except that the center is located five miles from the public church buildings. Tangible personal property purchased by the

center would be taxable since the center is not located in the public church buildings.

I. Sales.

1. Generally. Churches that make retail sales of tangible personal property are required to register as dealers, collect the tax from customers (who may include church members, visitors, or other persons outside the church membership) and remit the tax to the department.

2. Food. If a church makes sales of food for which a profit is realized, the church should collect tax from the customers and remit the tax to the department. In these instances, the church may purchase the food exempt from the tax using a resale exemption certificate. For purposes of this subdivision only, if the sales price charged for food is completely offset by the cost of the food, and the church realizes no profit, then the church is not required to charge the tax to its customers on the sales price of the food. Instead, the church must pay the tax to its vendors on the purchase price of the food purchased. As long as the church pays tax on the purchase price of the food that it sells at cost, the church is not required to register as a dealer while conducting this activity or charge tax to customers.

3. Other sales. If a church makes sales of cassette tapes, audiovisual tapes, books, photo directories, and jewelry or makes sales of tangible personal property in yard sales or bazaars, the church should register as a dealer, collect the tax from its customers and remit the tax to the department.

4. Occasional sales. Except as provided in subdivision 2 of this subsection of this regulation, the church must collect the tax on all sales and remit the amount to the department unless the sales meet the criteria for occasional sales as provided in subdivision 2 of § 58.1-609.10 of the Code of Virginia and 23VAC10-210-1080. Yard sales and bazaars qualify as occasional sales under subdivision 2 of § 58.1-609.10 of the Code of Virginia and 23VAC10-210-1080.

Example 7: A church holds yard sales to raise money to support ministries and other church-related activities. The yard sales are held in the church facility or on church grounds, and consist of the sales of tangible personal property donated by church members. Although numerous items of tangible personal property are sold at each yard sale, each day's yard sale is considered to be one sale for purposes of the occasional sale rule. As long as the church does not hold more than three yard sales in a calendar year, the church is not required to register as a dealer and collect and remit sales tax.

Example 8: Facts are the same as in Example 7, except that the church rents a booth or space for one day from a flea market organizer who is registered as a dealer. The primary business of the flea market is to rent a booth or space to sell tangible personal property. As the church yard sale takes place as part of a regular ongoing business (the flea market) that takes place more than three times a year, the yard sale would not qualify as an occasional sale. The flea market organizer is held responsible for the collection of sales tax for any property sold using its facilities and must collect sales tax from the church based on the sales price of property sold or allow the church to collect the tax and remit it to the Department of Taxation.

VA.R. Doc. No. R09-646; Filed June 11, 2009, 1:43 p.m.

EXECUTIVE ORDER NUMBER 82 (2009)

GREENING OF STATE GOVERNMENT

Importance of the Initiative

Virginians are fortunate to inhabit a state with tremendous natural beauty and abundant resources that support our economy. Virginia state government takes seriously the responsibility as set forth in Article XI of the Constitution of Virginia to act as a steward of these resources, in order to pass them along to future generations undiminished. The Commonwealth's citizens enjoy an unparalleled quality of life, and can continue to do so as our population increases and our economy expands if we are persistent in exploring ways to reduce our collective impact upon the environment.

Like all large enterprises, the business operations of the Commonwealth have a significant environmental impact in terms of pollution and natural resource consumption. The production, use, and disposal of materials, as well as the generation and use of energy can have a significant impact on environmental quality and public health. Fortunately, opportunities to reduce these impacts are numerous, as are opportunities to save money through reducing the energy and resources required to govern effectively. By showing leadership in reducing the environmental impact of government operations, the Commonwealth can inspire measures in the private sector and in the homes of citizens.

The Commonwealth already has taken a number of steps to reduce state government's energy and environmental impact. These actions include implementation of Executive Order 48 addressing energy use in state facilities, Executive Order 35 and § 2.2-2817.1 of the Code of Virginia addressing telecommuting by state employees, and the adoption of Environmental Management System standards by a number of agencies. This new Executive Order expands these efforts so as to promote continual improvement in the Commonwealth's sustainability practices.

There are several ways to encourage sustainability in government operations. One way is to urge agencies to participate in a friendly competition to implement practices and generate ideas to reduce the environmental impact of everyday activities. Indeed, Virginia's local governments have shown tremendous leadership with this approach through the "Go Green Virginia" initiative that was created by the Virginia Municipal League and joined by the Virginia Association of Counties and the Virginia School Boards Association. In order to accelerate state government improvements in the short term, this Executive Order establishes a competition inspired by "Go Green Virginia." For longer-term goals, this Executive Order employs the approach of setting measurable goals in a way that affords flexibility in how the goals are met.

When Virginia has achieved the vision of a truly "green government," buildings will be constructed and operated in a way that minimizes the need for energy and water. State employees will eliminate unnecessary driving for business travel and commuting and will conduct business in a way that minimizes the use of disposable materials. Those disposable materials that are used in day-to-day operations will be recycled or reused to the maximum extent possible. Care will be taken to ensure that energy to power lights, computers, and heating and air conditioning systems is not unnecessarily being consumed during and outside of business hours. Recycled materials, nontoxic products and renewable forms of energy will be used as much as possible.

By the power vested in me by Article V of the Constitution of Virginia, and § 2.2-103 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby direct the Governor's Secretaries and all executive branch agencies and institutions to increase the use of sustainability practices, many of which will result in long-term reduced costs in state government operations.

Environmental Management Systems and Policies

No later than July, 1, 2010, every executive branch agency and institution shall either have (i) notified the Department of Environmental Quality's Office of Pollution Prevention of its intent to develop an Environmental Management System (EMS) or (ii) adopted and posted on its website a suite of policies regarding energy use, water use, waste reduction and travel that will reduce the environmental impacts and costs of those activities. Agencies and institutions electing to develop an EMS shall achieve E2 or higher certification under the Virginia Environmental Excellence program by July 1, 2011. Policies adopted in lieu of an EMS shall contain the following:

1. Energy use. At a minimum, the energy use policy shall address powering down computers when not in use, turning off interior and exterior lights when not needed, and reducing the energy consumption of heating and cooling systems outside of office hours.

2. Water use. At a minimum, the water use policy shall address eliminating plumbing leaks and (if applicable) minimizing use of water for irrigation through reduced frequency of watering, timing of watering, and the selection of low water-use landscaping such as drought resistant grass, plants, shrubs and trees.

3. Waste reduction. At a minimum, the waste reduction policy shall address ways of reducing consumption of paper and other office supplies, ways of reducing the use of disposable supplies, and recycling of white paper, mixed paper, plastic, batteries, printer cartridges and aluminum. For any agency that performs maintenance on vehicles, the policy shall address recycling of oil and antifreeze.

Agencies are encouraged to include provisions regarding composting.

4. Travel. At a minimum, the travel policy shall address: carpooling to meetings, use of video conferencing and conference calls in lieu of in-person meetings, and purchasing of alternative fuels where available. Agencies are encouraged to include restrictions on whether the agency will pay mileage for single-passenger use of personal vehicles for business travel.

The Department of Environmental Quality shall, upon request, provide examples of such policies to any agency.

Building and Facility Construction and Location

All executive branch agencies and institutions entering the design phase for construction of a new building greater than 5,000 gross square feet in size, or renovating such a building where the cost of renovation exceeds 50 percent of the value of the building, shall meet Department of General Services (DGS), Division of Engineering and Buildings "Virginia Energy Conservation and Environmental Standards" for energy performance and water conservation. In addition, all such buildings shall conform to LEED silver or Green Globes two-globe standards, unless an exemption from such standards is granted by the Director of the DGS upon a written finding of special circumstances that make construction to the standards impracticable.

When a Commonwealth agency or institution is to lease space or build a new building in a metropolitan area where public transportation is available, it shall seek to lease or build within a quarter mile of a transit or commuter rail stop. The Commonwealth also shall, when leasing and building facilities, seek locations that are pedestrian and bicycle accessible. The Commonwealth shall encourage the private sector to adopt green building standards by striving to lease facilities that meet the same standards as those required for new state construction as outlined above. The Division of Real Estate Services of the Department of General Services shall consider these preferences in approving new leases or extensions of current leases.

Procurement Standards

The Department of General Services and Virginia Information Technology Agency shall establish specifications for use by state agencies and institutions subject to the Virginia Public Procurement Act in the procurement of commodities and services. The specifications shall encourage agencies to utilize commodities and services that will: (i) reduce or eliminate the health and environmental risks from the use or release of toxic substances; (ii) minimize risks of the discharge of pollutants into the environment; (iii) minimize the volume and toxicity of packaging; (iv) maximize the use of recycled content and materials composed of sustainably managed renewable resources; (v) maximize the use of equipment that is durable, and therefore, can be used for a long time without having to be replaced; and (vi) maximize the use of remanufactured components.

The Department of General Services also shall include in its policies and procedures requirements for the purchase of fuel-efficient, low-emission state-owned vehicles. In addition, DGS shall include in its policies and procedures for leasing vehicles requirements that encourage the use of compact, fuel-efficient, and low-emission vehicles.

All agencies and institutions except for public safety agencies shall maximize biofuel use in state fleet vehicles. The Department of General Services shall make available, at selected sites based upon the locations of state-owned flex-fuel and diesel vehicles, E85 and B2 fuels for agencies. Agencies and institutions that independently purchase fuel shall use E85 and B2 fuel sites to the maximum extent reasonably possible.

In addition, the following standards shall be observed by all executive branch agencies and institutions:

1. Agencies and institutions shall purchase or lease Energy Star-rated appliances and equipment for all classifications for which an Energy Star designation is available.

2. All new copiers, faxes, printers, and other such office equipment purchased or leased by agencies and institutions that use paper shall be recycled paper-compatible. Agencies and institutions shall purchase only recycled paper except where equipment limitations or the nature of the document preclude the use of recycled paper.

3. Beginning on July 1, 2010, agencies and institutions other than public safety agencies shall procure only diesel fuel containing, at a minimum, two percent, by volume, biodiesel fuel or green diesel fuel, as defined in § 45.1-394 of the Code of Virginia. This requirement shall only apply to procurements of diesel fuel for use in on-road internal combustion engines and #2 fuel burned in a boiler, furnace, or stove for heating, and shall not apply if the cost of such procurement exceeds the cost of unblended diesel fuel by 5 percent or more.

4. In selecting sites for conferences and other meetings that are to be held at places other than state facilities, agencies and institutions shall, after complying with procurement statutes and regulations, observe the following guidelines. For meetings attended by fewer than 50 people, agencies and institutions shall strive to use "Virginia Green" certified facilities. For meetings attended by 50 or more people, only "Virginia Green" certified facilities shall be used unless permission to select a different site has been granted by the Chief of Staff. In conducting meetings, agencies and institutions shall minimize the use of paper. When meals are served, disposable materials should be avoided to the greatest extent possible. Disposable materials that are used should be biodegradable or recyclable.

5. No agency or institution shall procure water in individual serving-sized containers made of plastic except for use in emergencies or for safety and health reasons.

Energy Efficiency

All agencies and institutions shall provide adequate management support to their energy-savings activities. In order to ensure agencies have sufficient expertise in energy management, every Agency Energy Manager for an agency or institution with energy costs exceeding $1 million annually shall be certified as an energy manager by the Association of Energy Engineers.

The requirements of Executive Order 48 that (i) executive branch agencies and institutions must reduce the annual cost of non-renewable energy purchases by at least 20 percent of fiscal year 2006 expenditures by fiscal year 2010, and (ii) any agency or institution that can demonstrate to the Senior Advisor for Energy Policy that it met the 10 percent energy savings goal established for 2006 in Executive Order 54 (2003) must reduce costs of non-renewable energy purchase by an additional 15 percent of fiscal year 2006 expenditures by fiscal year 2010, are hereby continued. In addition, all executive branch agencies and institutions shall achieve an additional savings of 5 percent of fiscal year 2006 expenditures by fiscal year 2012.

Agencies shall report their progress towards the energy-savings goals to the Director of the Department of Mines, Minerals and Energy. Such progress shall be reported to the public on the Department of Mines, Minerals and Energy's website.

The Department of Mines, Minerals and Energy shall be responsible for providing technical assistance to state agencies and institutions in achieving energy savings. Specifically, the Department of Mines, Minerals and Energy shall:

1. Assist state agencies in their efforts to conserve energy to the maximum extent feasible;

2. Assist agencies and institutions with implementation of this Executive Order;

3. In cooperation with the Department of Environmental Quality, assist agencies with calculating the extent to which their energy savings result in a reduction in greenhouse gas emissions; and

4. Maintain a system to monitor and report on progress made by state agencies toward reducing from its 2006 baseline energy costs and consumption for state-owned facilities and provide a report at least annually on its website.

Providing Government Services

All reports published by executive branch agencies and institutions shall be published in electronic form only, unless permission to print the report has been granted by the Chief of Staff. If printing is necessary, agencies should maximize their use of post-consumer recycled paper and environmentally friendly inks.

Executive branch agencies and institutions shall strive to increase opportunities for citizens and businesses to engage in electronic transactions with the Commonwealth rather than having to travel to state offices.

Commuting to Work

As an employer, the Commonwealth should make it easy for employees to minimize the impacts of commuting on energy consumption, traffic congestion and emissions. All agencies and institutions shall implement transit and ridesharing incentive programs within the parameters of the Department of Human Resource Management's guidelines. Agencies shall consider encouraging the use of transit by providing transit passes for free while charging for parking, such as is currently the policy of the Virginia Department of Transportation and Virginia Department of Rail and Public Transportation.

§ 2.2-2817.1 of the Code of Virginia requires each state agency to pursue a goal of not less than 20 percent of its eligible workforce telecommuting by January 1, 2010. Wherever possible, agencies and institutions should use telecommuting to the fullest extent to mitigate traffic congestion and reduce emissions.

To encourage employers to fully explore the feasibility of telecommuting, I hereby declare Monday, August 3, 2009, a "Statewide Telework Day" and request that the directors of state agencies and institutions as well as private sector employers allow as many citizens as possible to telecommute on that day.

Green Commonwealth Challenge

Every day we each make choices that result in impacts to the environment; opportunities to lessen these impacts abound. For instance, we can reduce automobile emissions by holding videoconferences or conference calls rather than face-to-face meetings and by walking, bicycling, carpooling, or taking transit to work. We can reduce the need for landfills by reducing the disposable items we use and recycling the rest.

I challenge state agencies and employees to use the next few months to see how many such deliberate, voluntary actions can be achieved. Agencies that choose to participate in this challenge shall report to the Secretary of Natural Resources the following metrics for the period of June 15 through November 15, 2009:

- Number of in-person meetings avoided through the use of video conferences or conference calls, as well as an estimate of the resulting travel miles avoided.
- Number of trips avoided by agency employees carpooling with others.

- Number of meetings planned by the agency for which the agency facilitated carpooling of attendees (e.g., through the use of a survey or other tool to help connect meeting attendees).
- Number of different materials included in the agency's recycling program (e.g., white paper, mixed paper, plastic bottles, batteries).
- Number of days each employee telecommuted or commuted to work any way other than driving in a car alone.

In addition, participating agencies shall submit to the Secretary:

- Electricity bills for the months of July, August, and September of 2008, as well as the months of July, August and September 2009.

The Secretary of Natural Resources shall devise a scoring system and provide guidelines to participating agencies. The Secretary shall compile all the reports received by December 1, 2009, and shall announce the three highest scoring agencies by December 15, 2009.

I invite all state employees to submit suggestions to the Employee Suggestion Program website regarding ways that state government can reduce environmental impacts of its operations. The employee who submits the idea that is determined by Secretaries of Administration and Natural Resources and the Chief of Staff to be the best idea will receive one day of annual leave. To be eligible for this extra incentive, the suggestions must reference this executive order.

Senior Advisor for Energy Policy and Energy Policy Advisory Council

The Governor's Energy Policy Advisory Council and the position of Senior Advisor to the Governor for Energy Policy established in Executive Order 48 are hereby continued. The Senior Advisor serves as the Governor's principal advisor on energy-related issues and is directed to coordinate energy policy across state agencies and institutions, including advising state institutions of higher education on coordinating energy research efforts.

The Senior Advisor shall update the Virginia Energy Plan in conjunction with the Division of Energy of the Department of Mines, Minerals, and Energy, as provided for in Chapter 2 of Title 67 of the Code of Virginia, drawing upon expertise of other agencies and institutions and Virginia businesses as appropriate.

The Governor's Energy Policy Advisory Council shall be chaired by the Senior Advisor for Energy Policy. The Council shall consist of 15 members appointed by the Governor, to serve at his pleasure. Appointees shall include representatives of Virginia's energy providers and producers, residential, commercial and industrial energy consumers, Virginia's conservation community, and the Secretaries of Natural Resources, Commerce and Trade, and Technology. The Advisory Council shall make a report of its activities by December 1 of each year. The Advisory Council's responsibilities shall include the following:

1. Review the recommendations set forth in the Virginia Energy Plan as well as other relevant reports and studies.

2. Evaluate strategies for implementing recommendations of the Virginia Energy Plan, including prioritization, approach, and timeline.

3. Monitor implementation of the Virginia Energy Plan.

4. Identify additional energy policy options for the Commonwealth to address energy issues.

5. Make other recommendations as may be appropriate.

Effective Date of the Order

This Executive Order rescinds Executive Order Number Forty-eight (2007), Energy Efficiency in State Government, issued on April 5, 2007.

This Executive Order shall become effective upon its signing and shall remain in full force and effect until July 1, 2013, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 10th day of June, 2009.

/s/ Timothy M. Kaine
Governor

STATE CORPORATION COMMISSION

Bureau of Insurance

June 15, 2009

Administrative Letter 2009-06

To: All Insurers Licensed To Write Accident and Sickness Insurance in Virginia and All Health Services Plans Licensed In Virginia, and Other Interested Parties

Re: 2009 House Bill 2024 and Senate Bill 1411
Virginia Code §§ 38.2-3406.1 and 38.2-3406.2

The purpose of this Administrative Letter is to provide guidance to insurers and health services plans that may be interested in developing one or more contracts or plans of "basic health insurance coverage" in accordance Virginia Code §§ 38.2-3406.1 and 38.2-3406.2, enacted by the Virginia General Assembly during its 2009 legislative session. For purposes of this letter, the term "basic health insurance coverage" means a group policy or subscription contract providing accident and sickness insurance coverage, offered or issued by a health insurer or health services plan, to small employers.

The full text of House Bill 2024 and Senate Bill 1411, both of which amend the Code of Virginia by adding Virginia Code §§ 38.2-3406.1 and 38.2-3406.2, may be obtained at http://legis.state.va.us/. Both bills establish additional requirements and define terms applicable to the "basic health insurance coverage" product that are not addressed in this letter. Both bills also amend or reenact other Virginia Code sections. Carriers are therefore strongly advised to review both bills in their entirety.

In accordance with the provisions of §§ 38.2-3406.1 and 38.2-3406.2, group accident and sickness policies or subscription contracts sold or issued by health insurers or health services plans to small employers may include "any or none" of the state-mandated health benefits, with the exception of the following state-mandated benefits, for which coverage must be included:

- § 38.2-3418.1 - coverage for mammograms
- § 38.2-3418.1:2 - coverage for pap smears
- § 38.2-3418.7 - coverage for PSA testing
- § 38.2-3418.7:1 - colorectal cancer screening

In addition, to the extent that health care services covered by these policies or subscription contracts may be legally rendered by a health care provider listed in Virginia Code § 38.2-3408, the "basic health insurance coverage" product must allow for the reimbursement of such covered services when rendered by such a provider.

In connection with any and all products developed in accordance with § 38.2 3406.1, the Bureau of Insurance (the Bureau), will expect and require the following:

- The intended purpose of any and all forms developed in accordance with § 38.2 3406.1 must be clearly disclosed when the forms are submitted to the Bureau for approval.
- Policy forms, subscription contracts, certificate forms or other evidences of coverage furnished to small employers and their employees must prominently disclose any and all state-mandated health benefits that the policies or subscription contracts do not provide.
- Application and enrollment forms must include the following:

  1. A prominent disclosure that the policy or contract is not required to provide all state-mandated health benefits, along with the specific state-mandated health benefits that the policy or subscription contract does not provide; and

  2. A clear description of any and all eligibility requirements applicable to each employee.

The bills also direct carriers offering these plans to report information identified below to the Bureau, from which reports relating to these plans will be made to the Governor and the General Assembly on August 1, 2010 and August 1, 2011. To that end, carriers are also expected and required to maintain any and all records relating to the following. Specific instructions for reporting this information will be furnished at a later date:

(1) the number of small employers and the number of individuals covered by basic health insurance coverage plans;

(2) the state-mandated health benefits covered under each basic health insurance coverage plan issued; and

(3) the premium cost and out-of-pocket expenses for each plan.

Questions regarding this letter may be directed to: Deborah Sale, Senior Insurance Market Examiner, Life and Health Division, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9110, FAX (804) 371-9944, or email deborah.sale@scc.virginia.gov.

/s/ Alfred W. Gross
Commissioner of Insurance

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June 12, 2009

Administrative Letter 2009-07

To: All Companies Licensed under Chapter 10, 11, 12, 25, 26, 40, 41, 42, 43, 44, 45, 46 or 61 of Title 38.2 of the Code of Virginia

Re: Five Year Rotation of Certified Public Accountants
Rules Governing Annual Audited Financial Reports
(Rules Governing Annual Financial Reporting - 14VAC5-270)
Withdrawal of Administrative Letter 2000-04

The provisions of this administrative letter, effective January 1, 2010, replace the provisions of Administrative Letter 2000-04.

The purpose of this letter is to inform insurers and other affected parties that, pursuant to 14VAC5-270-80 D, no partner or other person responsible for rendering an annual audited financial report may act in that capacity for more than five consecutive years. This five year rotation requirement replaces the current seven year rotation requirement effective January 1, 2010.

An order adopting revisions to the "Rules Governing Annual Audited Financial Reports" was entered on January 23, 2008. The revisions to the rules will become effective on January 1, 2010, at which time the rules will be renamed to the "Rules Governing Annual Financial Reporting." The revisions to subsection 14VAC5-270-80 D changes the seven year CPA rotation requirement to a five year rotation requirement for audits of the year beginning January 1, 2010, and thereafter. Insurers and other affected parties are reminded that any partner or other person who has been responsible for rendering the annual audited financial report for the period ending December 31, 2005, and all subsequent years to date shall be disqualified from acting in that or a similar capacity for the insurer, or its insurance subsidiaries or affiliates, with respect to the audited financial reports filed for the period ending December 31, 2010, through December 31, 2014. An insurer may request relief from this rotation requirement based on the existence of unusual circumstances. The Bureau may consider the following factors in determining if relief should be granted:

1. The number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;

2. The premium volume of the insurer; or

3. The number of jurisdictions in which the insurer transacts business.

Written requests for relief from this rotation requirement should address the factors listed above, and identify also the person and, if applicable, the title of the person or persons responsible for rendering the annual audited financial reports for each of the last five years. A foreign or alien company seeking relief shall include with its request a letter from its domiciliary regulator specifying the reason relief was granted in the domiciliary jurisdiction and, if applicable, explaining the conditions of the relief granted. Written requests for relief in connection with audited financial reports for years ending December 31, 2010, and beyond should be received by the Bureau no later than December 1 of the reporting year.

All companies which are required to file an annual audited financial report pursuant to 14VAC5-270-30, including foreign and alien insurers, must comply with the requirements as set forth in 14VAC5-270-80 D and as restated in this letter.

Insurers and other affected parties are reminded also that the letter required by 14VAC5-270-130 should indicate compliance with 14VAC5-270-80 by disclosing the number of years the engagement partner (partner responsible for rendering an annual audited financial report) has served in that capacity with respect to the company.

Questions from domestic insurers regarding the implementation of the contents of this letter should be directed to: Gregory T. Chew, Supervisor, Financial Analysis Section, Domestic Companies, Financial Regulation Division, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9214, or email greg.chew@scc.virginia.gov.

Questions from health maintenance organizations regarding the implementation of the contents of this letter should be directed to: Andy R. Delbridge, Supervisor, Company Licensing and Regulatory Compliance Section, Financial Regulation Division, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9616, or email andy.delbridge@scc.virginia.gov.

Questions from foreign insurers regarding the implementation of the contents of this letter should be directed to: Gregory D. Walker, Supervisor, Financial Analysis Section, Non-Domestic Companies, Financial Regulation Division, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9604, or email greg.walker@scc.virginia.gov.

/s/ Alfred W. Gross
Commissioner of Insurance

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice of Availability of 2008 Fish Tissue Monitoring Data

Pursuant to § 62.1-44.19:6 A 3 the Virginia Department of Environmental Quality (DEQ) is giving notice that new data concerning the presence of toxic contaminants in fish tissue are available for calendar year 2008. Fish monitoring in 2008

was performed at selected sites in the following river basins in Virginia: the York River watershed (Mattaponi River, South Anna, North Anna including Lake Anna and Pamunkey River drainages), the Chesapeake Bay Small Coastal and Atlantic Ocean Small Coastal drainages, and the Potomac River and James River watersheds.

The new data have been posted on the DEQ website at http://www.deq.virginia.gov/fishtissue/fishtissue.html. All other data for fish and/or sediments analyzed by DEQ between 1993 and 2007 can also be found on this website.

For additional information contact Gabriel Darkwah at (804) 698-4127, toll free 1-800-592-5482, or via email gabriel.darkwah@deq.virginia.gov.

Proposed Consent Order - Tascon Group, Inc.

An enforcement action has been proposed for Tascon Group, Inc. for alleged violations at the Harvest Glen development in Chesterfield County. The proposed consent order describes the alleged violations, requires corrective action and contains a civil charge. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Allison Dunaway will accept comments by email at acdunaway@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 July 6, 2009, to August 6, 2009.

Development of TMDL Implementation Plan - Upper Nansemond River Watershed

The Department of Environmental Quality (DEQ), the Department of Conservation and Recreation (DCR), the Hampton Roads Planning District Commission, Isle of Wight County, and the City of Suffolk invite citizens to a public meeting to discuss the development of an implementation plan (IP) to address fecal bacteria impairments in the Upper Nansemond River Watershed. Water quality monitoring indicates that bacteria levels in the Nansemond River violate Virginia's water quality standards for shellfishing and primary contact recreation. A total maximum daily load (TMDL) study for the impairments was approved by EPA in 2006 and is available on DEQ's website at http://www.deq.virginia.gov/tmdl/apptmdls/jamesrvr/nanshgl.pdf

The implementation plan will identify ways to meet the pollutant reductions outlined in the TMDL study.

The first public meeting to begin development of the TMDL Implementation Plan will be held on Thursday, July 9, 2009, at 6:30 p.m., King's Fork Middle School, 350 Kings Fork Road, Suffolk, VA 23434.

The purpose of the meeting is to discuss the proposed reductions in bacteria needed in the watershed and to solicit public participation for the IP development. The IPs will include the corrective actions needed to reduce bacteria and the associated costs, benefits and environmental impacts. The IPs will also provide measurable goals and a timeline of expected achievement of water quality objectives. A fact sheet on the development of the IPs is available upon request.

How to comment: The public comment period on the development of the IP will end on August 10, 2009. Oral comments will be accepted and addressed at the public meeting. Additional questions or information requests should be addressed to Jennifer Howell. Written comments and inquires should include the name, address, and telephone number of the person submitting the comments and should be sent to Jennifer Howell, Department of Environmental Quality, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, FAX (757) 518-2003, or email jshowell@deq.virginia.gov or Jennifer Tribo, Hampton Roads Planning District Commission (HRPDC), 723 Woodlake Dr., Chesapeake, VA 23320, telephone (757) 366-4344, FAX (757) 523-4881, or email jtribo@hrpdc.org.

Restore Water Quality - Cripple Creek

Announcement of an effort to restore water quality in Cripple Creek located in Wythe County, Virginia.

Public meeting location: Speedwell Volunteer Fire Department in Speedwell, Virginia, on Thursday, July 23, 2009, from 6 p.m. to 8 p.m.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are announcing a study to restore water quality, a public comment opportunity, and public meeting.

Meeting description: Second public meeting on a study to restore water quality.

Description of study: DEQ is working to identify sources of bacteria contamination in the waters of Cripple Creek. The "impaired" stream segments are estimated to be approximately 14.4 miles of Cripple Creek, including the lower mainstem from the New River confluence upstream to the Dean Branch confluence. It also includes the mainstem from the Dry Run confluence downstream to the Francis Mill Creek confluence. The last segment extends from the headwaters upstream of US Route 21, downstream to the confluence of Blue Spring Creek. The stream is impaired for failing to meet the recreational use because of fecal coliform bacteria violations.

A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. The plan will identify the sources of bacteria contamination and develop a TMDL for bacteria. To restore water quality, contamination levels must be reduced to the TMDL amount.

How a decision is made: The development of a TMDL includes public meetings and a public comment period once

the study report is drafted. After public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency for approval.

How to comment: DEQ accepts written comments by email, fax or postal mail. Written comments should include the name, address and telephone number of the person commenting and be received by DEQ during the comment period, July 23, 2009, to August 24, 2009. DEQ also accepts written and oral comments at the public meeting announced in this notice.

To review fact sheets: Fact sheets are available on the impaired waters from the contacts below or on the DEQ website at www.deq.virginia.gov/tmdl.

Contact for additional information: Shelley D. Williams, Regional TMDL Coordinator, Department of Environmental Quality, Southwest Regional Office, 355 Deadmore Street, P.O. Box 1688, Abingdon, VA 24212-1688, telephone (276) 676-4845, FAX (276) 676-4899, or email sdwilliams@deq.virginia.gov.

Restore Water Quality - Elk Creek

Announcement of an effort to restore water quality in Elk Creek located in Grayson County, Virginia.

Public meeting location: Elk Creek Rescue Squad Building, on Tuesday, July 21, 2009, from 6 p.m. to 8 p.m.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are announcing a study to restore water quality, a public comment opportunity, and public meeting.

Meeting description: Second public meeting on a study to restore water quality.

Description of study: DEQ has been working to identify sources of bacteria contamination in the waters of Elk Creek. The "impaired" stream segments are estimated to be approximately 19.64 miles of Elk Creek, including the mainstem of Elk Creek from the confluence with New River upstream to the Comers Rock Branch confluence. The stream is impaired for failing to meet the recreational use because of fecal coliform bacteria violations.

A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. The plan will identify the sources of bacteria contamination and develop a TMDL for bacteria. To restore water quality, contamination levels must be reduced to the TMDL amount.

How a decision is made: The development of a TMDL includes public meetings and a public comment period once the study report is drafted. After public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency for approval.

How to comment: DEQ accepts written comments by email, fax or postal mail. Written comments should include the name, address and telephone number of the person commenting and be received by DEQ during the comment period, July 21, 2009, to August 21, 2009. DEQ also accepts written and oral comments at the public meeting announced in this notice.

To review fact sheets: Fact sheets are available on the impaired waters from the contacts below or on the DEQ website at www.deq.virginia.gov/tmdl.

Contact for additional information: Shelley D. Williams, Regional TMDL Coordinator, Department of Environmental Quality, Southwest Regional Office, 355 Deadmore Street, P.O. Box 1688, Abingdon, VA 24212-1688. telephone (276) 676-4845, FAX (276) 676-4899, or email sdwilliams@deq.virginia.gov.

Restore Water Quality - Middle Fork Holston River

Announcement of an effort to restore water quality in Middle Fork Holston River in Smyth and Washington County, Virginia.

Public meeting location: Glade Spring Community Center in Glade Spring, Virginia, on Tuesday, July 28, 2009 from 6 p.m. to 8 p.m.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are announcing a study to restore water quality, a public comment opportunity, and public meeting.

Meeting description: Second public meeting on a study to restore water quality.

Description of study: DEQ has been working to identify sources of pollutants affecting the aquatic organisms and sources of bacteria contamination in the waters of the Middle Fork Holston River. The "impaired" stream segments are estimated to be approximately 44.4 miles of the Middle Fork Holston River. The stream is impaired for failing to meet the aquatic life use (benthic impairment) based on violations of the general standard for aquatic organisms and failure to meet the recreational use because of fecal coliform bacteria violations. The bacteria impairment extends from the Dutton Bridge confluence downstream to the Neff community. The benthic impairment extends from the Rt. 91 bridge downstream to the Neff community.

During the study, the pollutants impairing the aquatic community will be identified and total maximum daily loads, or TMDLs, developed for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. DEQ will also determine the sources of bacteria contamination and develop a TMDL for bacteria. To restore water quality, contamination levels must be reduced to the TMDL amount.

How a decision is made: The development of a TMDL includes public meetings and a public comment period once the study report is drafted. After public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency for approval.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, July 28, 2009, to August 28, 2009. DEQ also accepts written and oral comments at the public meeting announced in this notice.

To review fact sheets: Fact sheets are available on the impaired waters from the contacts below or on the DEQ website at www.deq.virginia.gov/tmdl.

Contact for additional information: Shelley D. Williams, Regional TMDL Coordinator, Department of Environmental Quality, Southwest Regional Office, 355 Deadmore Street, P.O. Box 1688, Abingdon, VA 24212-1688, telephone (276) 676-4845, FAX (276) 676-4899, or email sdwilliams@deq.virginia.gov.

Restore Water Quality - Morris Creek

Public meeting: July 15, 2009, at the Charles City County Government and School Board Administration Building Auditorium, 10900 Courthouse Road, Charles City, VA 23030. An afternoon public meeting will be held from 2 p.m. to 4 p.m. and the evening public meeting from 6 p.m. to 8 p.m.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are presenting the final draft report of a study to restore water quality, a public comment opportunity, and two public meetings.

Meeting description: Final public meetings on a study to restore water quality of the recreation/swimming use of Morris Creek, which is impaired due to bacterial violations.

Description of study: Virginia agencies have been working to identify sources of the bacterial contamination in Morris Creek. This impairment spans approximately 7.73 stream miles in Charles City County. This stream is impaired for failure to meet the recreational (swimming) designated use because of bacterial water quality standard violations.

Stream	County	Impairment Length (mi)	Impairment
Morris Creek	Charles City	7.73	Recreational (swimming) Use

The study reports the current status of the creek via sampling performed by the Virginia Department of Environmental Quality and the possible sources of bacterial contamination. The study recommends total maximum daily loads, or TMDLs, for the impaired creek. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels have to be reduced to the TMDL amount.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, which will expire on Thursday, August 13, 2009. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804) 527-5106, or email mjsmigo@deq.virginia.gov.

Restore Water Quality - Wolf Creek

Announcement of an effort to restore water quality in Wolf Creek located in Washington County, Virginia.

Public meeting location: Glade Spring Community Center in Glade Spring, Virginia, on Tuesday, July 28, 2009, from 6 p.m. to 8 p.m.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are announcing a study to restore water quality, a public comment opportunity, and public meeting.

Meeting description: Second public meeting on a study to restore water quality.

Description of study: DEQ has been working to identify sources of pollutants affecting the aquatic organisms and sources of bacteria contamination in the waters of Wolf Creek. The "impaired" stream segments are estimated to be approximately 7.87 miles of Wolf Creek, from the lake backwaters upstream to the Town Creek confluence. The stream is impaired for failing to meet the aquatic life use based on violations of the general standard for aquatic organisms and failure to meet the recreational use because of fecal coliform bacteria violations.

During the study, the pollutants impairing the aquatic community will be identified and total maximum daily loads, or TMDLs, developed for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. DEQ will also determine the sources of bacteria contamination and develop a TMDL for bacteria. To restore water quality, contamination levels must be reduced to the TMDL amount.

How a decision is made: The development of a TMDL includes public meetings and a public comment period once

the study report is drafted. After public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency for approval.

How to comment: DEQ accepts written comments by email, fax or postal mail. Written comments should include the name, address and telephone number of the person commenting and be received by DEQ during the comment period, July 28, 2009, to August 28, 2009. DEQ also accepts written and oral comments at the public meeting announced in this notice.

To review fact sheets: Fact sheets are available on the impaired waters from the contacts below or on the DEQ website at www.deq.virginia.gov/tmdl.

Contact for additional information: Shelley D. Williams, Regional TMDL Coordinator, Department of Environmental Quality, Southwest Regional Office, 355 Deadmore Street, P.O. Box 1688, Abingdon, VA 24212-1688, telephone (276) 676-4845, FAX (276) 676-4899, or email sdwilliams@deq.virginia.gov

DEPARTMENT OF ENVIRONMENTAL QUALITY AND DEPARTMENT OF CONSERVATION AND RECREATION

Total Maximum Daily Load - Middle River

The Department of Conservation and Recreation (DCR) and the Department of Environmental Quality (DEQ) seek written and oral comments from interested persons on the development of a total maximum daily load (TMDL) implementation plan for Middle River and its tributaries in Augusta County. The Upper Middle River, Lower Middle River, Moffett Creek, and Polecat Draft were originally listed as impaired in the 1996 303d Report. All streams were listed for violations of the water quality standard for bacteria and the Upper Middle River segment and Moffett Creek were additionally listed for the general aquatic life (benthic) standard. TMDLs for bacteria were developed to address the bacterial impairments in all streams. A TMDL for sediment in Upper Middle River and Moffett Creek were developed to address the benthic impairments. These TMDLs were approved by EPA on August 10, 2004, and are available on DEQ's website at http://gisweb.deq.virginia.gov/tmdlapp/tmdl_report_search.cfm.

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.

Public participation is critical to the implementation planning process. DCR and DEQ will hold a first public meeting on July 16, 2009, at 7 p.m. to inform the public of the IP development and to solicit participation. The meeting will be held at the Churchville Fire Hall, 3829 Churchville Avenue, Churchville, VA. Following this first informational meeting, DCR and DEQ will hold meetings for interested stakeholders to join working groups, which will direct the process and provide input to the agencies.

The public comment period for this first public meeting will end on August 17, 2009. Questions or information requests should be addressed to Nesha Mizel, Department of Conservation and Recreation, telephone (540) 332-9238. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Nesha Mizel, 44 Sangers Lane, Suite 102, Staunton, VA 24401, telephone (540) 332-9238, or email nesha.mizel@dcr.virginia.gov.

BOARD OF LONG-TERM CARE ADMINISTRATORS

Notice of Periodic Review

The Board of Long-Term Care Administrators has submitted a notice of periodic review:

18VAC95-20, Regulations Governing the Practice of Nursing Home Administrators

Comment period begins on May 25, 2009, and ends on June 24, 2009.

Review Announcement: The Board of Long-Term Care Administrators within the Department of Health Professions is preparing to conduct a periodic review of 18VAC95-20, Regulations Governing the Practice of Nursing Home Administrators.

The board is receiving comment on whether there is a need for amendments for clarification or for consistency with changes in practice.

Regulations are located on the Virginia Administrative Code website at http://regulations.legis.virginia.gov.

Contact for additional information: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on June 17, 2009. The orders 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 Forty-Four (09)

Virginia Lottery's "Corvette® Lovers Summer Fun Sweepstakes" (effective 6/17/09)

Director's Order Number Fifty-One (09)

Virginia's Instant Lottery Game #1111 "Corvette® Cash" (effective 6/17/09)

DEPARTMENT OF MINES, MINERALS AND ENERGY

Notice of Periodic Review

Pursuant to Executive Order 36 (2006), The Virginia Department of Mines, Minerals and Energy (DMME) is conducting a periodic review and invites public comment on the following regulation:

4VAC25-125, Regulations Governing Coal Stockpiles and Bulk Storage and Handling Facilities

The department will consider whether this existing regulation is essential to protecting the health, safety and welfare of the public. The department welcomes specific comments on the performance and effectiveness of this regulation and also requests suggestions to improve the content and organization of the regulation to make it more understandable and useful.

The comment period for this review begins on July 6, 2009, and ends at 5 p.m. on August 5, 2009. Comments may be submitted to David Spears, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402 or email david.spears@dmme.virginia.gov.

Regulations may be viewed online at the Virginia Regulatory Town Hall site located at http://www.townhall.virginia.gov or the Virginia Administrative Code at http://regulations.legis.virginia.gov, or copies will be sent upon request.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

Filing Material for Publication in the Virginia Register of Regulations

Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the Virginia Register of Regulations. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file print copies of regulatory packages. Until that time, agencies may file petitions for rulemaking, notices of intended regulatory actions and general notices in electronic form only; however, until further notice, agencies must continue to file print copies of proposed, final, fast-track and emergency regulatory packages.

ERRATA

SAFETY AND HEALTH CODES BOARD

Title of Regulation: **16VAC25-175. Federal Identical Construction Industry Standards.**

Publication: 25:20 VA.R. 3639-3640 June 8, 2009.

Corrections to Final Regulation:

Page 3640, Titles of Regulations, after "amending" insert "16VAC25-175-1926.20,"

Page 3640, Titles of Regulations, after "16VAC25-175-1926.1127" strike "; adding 16VAC25-175-1926.20"

VA.R. Doc. No. R09-1944

BOARD OF LONG-TERM CARE ADMINISTRATORS

Titles of Regulations: **18VAC95-20. Regulations Governing the Practice of Nursing Home Administrators.**

18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators.

Publication: 25:19 VA.R. 3420 May 25, 2009.

Corrections to Final Regulation:

Page 3420, 18VAC95-20-70 A, line 1, after "changes" strike "of"

Page 3420, 18VAC95-30-30 A, line 1, after "changes" strike "of"

VA.R. Doc. No. R09-1932