



# Virginia Register of Regulations

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# THE VIRGINIA REGISTER INFORMATION PAGE

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

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

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

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

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

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

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

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

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

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

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

## **FAST-TRACK RULEMAKING PROCESS**

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

## **EMERGENCY REGULATIONS**

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

## **STATEMENT**

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

## **CITATION TO THE VIRGINIA REGISTER**

The *Virginia Register* is cited by volume, issue, page number, and date. **23:7 VA.R. 1023-1140 December 11, 2006**, refers to Volume 23, Issue 7, pages 1023 through 1140 of the *Virginia Register* issued on December 11, 2006.

*The Virginia Register of Regulations* is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

Members of the Virginia Code Commission: **R. Steven Landes**, Chairman; **John S. Edwards**, Vice Chairman; **Ryan T. McDougle**; **Robert Hurt**; **Robert L. Calhoun**; **Frank S. Ferguson**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **James F. Almand**; **Jane M. Roush**.

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

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## PUBLICATION SCHEDULE AND DEADLINES

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

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### October 2009 through July 2010

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
<b>FINAL INDEX Volume 25</b>		
		<b>October 2009</b>
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 ( <b>Tuesday</b> )	December 7, 2009
<b>INDEX 1 Volume 26</b>		
		<b>January 2010</b>
26:8	December 2, 2009	December 21, 2009
26:9	December 15, 2009 ( <b>Tuesday</b> )	January 4, 2010
26:10	December 29, 2009 ( <b>Tuesday</b> )	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
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		<b>April 2010</b>
26:15	March 10, 2010	March 29, 2010
26:16	March 24, 2010	April 12, 2010
26:17	April 7, 2010	April 26, 2010
26:18	April 21, 2010	May 10, 2010
26:19	May 5, 2010	May 24, 2010
26:20	May 19, 2010	June 7, 2010
<b>INDEX 3 Volume 26</b>		
		<b>July 2010</b>
26:21	June 2, 2010	June 21, 2010
26:22	June 16, 2010	July 5, 2010
26:23	June 30, 2010	July 19, 2010

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 12. HEALTH

### STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

#### Initial Agency Notice

**Title of Regulation: 12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services From Providers Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.**

**Statutory Authority: §§ 37.2-202 and 37.2-400 of the Code of Virginia.**

**Name of Petitioner: Steven Shoon.**

**Nature of Petitioner's Request: Amend the regulations to require the reason documented for denying patient access to service records and criteria for removal to be consistent with the statement the physician is required to put into the service record in order to deny patient access to the same.**

**Agency's Plan for Disposition of the Request: The board will consider the petition and any comments received at its regularly scheduled meeting on December 8, 2009.**

Public comments may be submitted until November 9, 2009.

**Agency Contact: Linda B. Grasewicz, Senior Planner, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0040, FAX (804) 371-0092, or email linda.grasewicz@dbhds.virginia.gov.**

VA.R. Doc. No. R10-04; Filed September 21, 2009, 11:02 a.m.

#### Initial Agency Notice

**Title of Regulation: 12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services From Providers Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.**

**Statutory Authority: §§ 37.2-202 and 37.2-400 of the Code of Virginia.**

**Name of Petitioner: Steven Shoon.**

**Nature of Petitioner's Request: The reinstatement of the requirement on limiting the timeframe of how long the provider can impose a restriction on the patient's access to their service records.**

**Agency's Plan for Disposition of the Request: The board will consider the petition and any comments received at its regularly scheduled meeting on December 8, 2009.**

Public comments may be submitted until November 9, 2009.

**Agency Contact: Linda B. Grasewicz, Senior Planner, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797,**

telephone (804) 786-0040, FAX (804) 371-0092, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R10-05; Filed September 21, 2009, 11:02 a.m.

#### Initial Agency Notice

**Title of Regulation: 12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services From Providers Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.**

**Statutory Authority: §§ 37.2-202 and 37.2-400 of the Code of Virginia.**

**Name of Petitioner: Steven Shoon.**

**Nature of Petitioner's Request: Regulation governing amendment of the service records should be amended to require the reviewer of patient requests to amend/correct their services records to be neither the patient's treating clinician nor a person who wrote the particular note in the service record that the patient is requesting to be amended/corrected.**

**Agency's Plan for Disposition of the Request: The board will consider the petition and any comments received at its regularly scheduled meeting on December 8, 2009.**

Public comments may be submitted until November 9, 2009.

**Agency Contact: Linda B. Grasewicz, Senior Planner, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0040, FAX (804) 371-0092, or email linda.grasewicz@dbhds.virginia.gov.**

VA.R. Doc. No. R10-06; Filed September 21, 2009, 11:02 a.m.

#### Initial Agency Notice

**Title of Regulation: 12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services From Providers Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.**

**Statutory Authority: §§ 37.2-202 and 37.2-400 of the Code of Virginia.**

**Name of Petitioner: Steven Shoon.**

**Nature of Petitioner's Request: Regulation governing access to or amendment/correction of patients' service records should be amended to limit to 10 days from the date of the submission's request the physician's response to a patient's request for accessing his service record; and the reviewer's response to a patient's request for amending/correcting his service record.**

**Agency's Plan for Disposition of the Request: The board will consider the petition and any comments received at its regularly scheduled meeting on December 8, 2009.**

Public comments may be submitted until November 9, 2009.

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# Petitions for Rulemaking

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Agency Contact: Linda B. Grasewicz, Senior Planner, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0040, FAX (804) 371-0092, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R10-07; Filed September 21, 2009, 11:02 a.m.

## Initial Agency Notice

Title of Regulation: **None specified.**

Statutory Authority: §§ 37.2-202 and 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Regulation governing different legal statuses of inpatient hospitalization and their discharge criteria should repeal the provision requiring or allowing a "provider" to wait until after 30 days from admission to inform the involuntarily, civilly committed patients' of their right to seek discharge from the facility director and their right to seek legal appeal of their civil commitment order to the Circuit Court pursuant to § 37.2-830 of the Code of Virginia.

Agency's Plan for Disposition of the Request: The board will consider the petition and any comments received at its regularly scheduled meeting on December 8, 2009.

Public comments may be submitted until November 9, 2009.

Agency Contact: Linda B. Grasewicz, Senior Planner, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0040, FAX (804) 371-0092, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R10-08; Filed September 21, 2009, 11:02 a.m.

## Initial Agency Notice

Title of Regulation: **12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services From Providers Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.**

Statutory Authority: §§ 37.2-202 and 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Regulations allowing the commissioner to suspend the applicability of the human rights regulation, through a written exemption, to people on forensic status or civilly committed as sexually violent predators should be repealed.

Agency's Plan for Disposition of the Request: The board will consider the petition and any comments received at its regularly scheduled meeting on December 8, 2009.

Public comments may be submitted until November 9, 2009.

Agency Contact: Linda B. Grasewicz, Senior Planner, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0040, FAX (804) 371-0092, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R10-09; Filed September 21, 2009, 11:02 a.m.

## Initial Agency Notice

Title of Regulation: **12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services From Providers Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.**

Statutory Authority: §§ 37.2-202 and 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Regulation should be amended to prohibit the commissioner from suspending the applicability of provisions in the human rights regulations that apply to people on forensic status or civilly committed as sexually violent predators through a written exemption where there are duplicate provisions of the same rights in the statutes (§ 37.2-400 of the Code of Virginia).

Agency's Plan for Disposition of the Request: The board will consider the petition and any comments received at its regularly scheduled meeting on December 8, 2009.

Public comments may be submitted until November 9, 2009.

Agency Contact: Linda B. Grasewicz, Senior Planner, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0040, FAX (804) 371-0092, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R10-10; Filed September 21, 2009, 11:02 a.m.

## Initial Agency Notice

Title of Regulation: **12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services From Providers Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.**

Statutory Authority: §§ 37.2-202 and 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Regulation should be amended to require the commissioner to specify the section codes and provisions as apart of the written exemptions for suspending the applicability of the human rights regulation to people on forensic status and civilly committed as sexually violent predators.

Agency's Plan for Disposition of the Request: The board will consider the petition and any comments received at its regularly scheduled meeting on December 8, 2009.

Public comments may be submitted until November 9, 2009.

Agency Contact: Linda B. Grasewicz, Senior Planner, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0040, FAX (804) 371-0092, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R10-11; Filed September 21, 2009, 11:02 a.m.

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## 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: Robert J. Haddad

Nature of Petitioner's Request: To amend regulations to (i) eliminate the distinction between conscious sedation and deep sedation since deep sedation is a likely result; (ii) institute a permitting process with inspection of dental offices to ensure they are appropriately equipped to handle an emergency situation; and (iii) create an Anesthesia Review Committee to assist the profession and the public with issues relating to anxiety/pain control/sedation in dentistry.

Agency Decision: Request denied.

Statement of Reasons for Decision: The board is currently conducting a periodic review of regulations, including those pertaining to administration of sedation and anesthesia. The board did not choose to initiate rulemaking outside of that review process to address the petitioner's recommendations. Additionally, the board does not have statutory authority for the issuance of a sedation/anesthesia permit, and it does not intend to pursue legislation for such authority.

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. R09-27; Filed September 11, 2009, 4:13 p.m.

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## TITLE 19. PUBLIC SAFETY

### DEPARTMENT OF STATE POLICE

#### Initial Agency Notice

Title of Regulation: **19VAC30-70. Motor Vehicle Safety Inspection Rules and Regulations.**

Statutory Authority: § 46.2-1059 of the Code of Virginia.

Name of Petitioner: J. Tyler Ballance.

Nature of Petitioner's Request: Restoring the proper use of automobile horns solely as a warning device.

Horns are defined as warning devices and are intended to be used solely for that purpose. In recent years, manufacturers have coupled their electronic "keyless" entry systems to the auto horn or auto alarm, so that operators may select an entry option that sounds the horn or auto alarm, both upon entry and exit from the vehicle. The resulting cacophony of spurious horn/alarm blasts adds to ambient noise pollution and diminishes the effectiveness of horns as warning devices.

An amendment to 19VAC30-70-240, or a new section that specifically requires verification during annual inspections, that electronic entry systems are set to silent entry and exit, is recommended.

Agency's Plan for Disposition of the Request: The board is requesting public comment on the petition to amend regulations relating to inspection standards for automobile horns. Following a public comment period, the board will consider its action on the petition.

Public comments may be submitted until November 13, 2009.

Agency Contact: Ronald B. Saunders, Captain, Safety Division, Department of State Police, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-6774, FAX (804) 674-2961, or email safety@vsp.virginia.gov.

VA.R. Doc. No. R10-12; Filed September 15, 2009, 3:55 p.m.

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# NOTICES OF INTENDED REGULATORY ACTION

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## 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: **9VAC25-115, General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Seafood Processing Facilities.** The purpose of the proposed action is to amend and reissue the existing general permit, which expires on July 23, 2011, and to continue the existence of the general permit that establishes limitations and monitoring requirements for point source discharges from seafood processing facilities.

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

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the federal Clean Water Act; 40 CFR Parts 122, 123, and 124.

Public Comment Deadline: November 12, 2009.

Agency Contact: George Cosby, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4067, FAX (804) 698-4032, or email [george.cosby@deq.virginia.gov](mailto:george.cosby@deq.virginia.gov).

VA.R. Doc. No. R10-2155; Filed September 22, 2009, 11:14 a.m.

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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

#### Final Regulation

**REGISTRAR'S NOTICE:** The State Air Pollution Control Board is claiming an exclusion from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Air Pollution Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **9VAC5-80. Permits for Stationary Sources (amending 9VAC5-80-25, 9VAC5-80-35).**

**Statutory Authority:** § 10.1-1308 of the Code of Virginia; §§ 110, 112, 165, 173, 182 and Title V of the federal Clean Air Act; 40 CFR Parts 51, 61, 63, 70 and 72.

**Effective Date:** November 12, 2009.

**Agency Contact:** Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

#### Summary:

*General public participation requirements for permit applications allow for either the director or a majority of board members to request a meeting of the board regarding direct consideration of a permit by the board in order to review the decision and determine whether or not to grant board consideration, or to delegate the permit to the director. If such a meeting is held electronically, the board must have at least one forum open to the public, and individual board members may participate from any location regardless of whether it is open to the public. Chapter 627 of the 2009 Acts of Assembly revised the provision requiring at least one forum to be open to the public and allowing individual board members to participate from any location in order to make it consistent with § 2.2-3708 of the Virginia Freedom of Information Act. The amendments conform the regulation to statutory language.*

#### **9VAC5-80-25. Direct consideration of permit actions by the board.**

A. During the public hearing comment period on a permit action, interested persons may request that the board directly consider the permit action pursuant to the requirements of this section. The public participation process requirements for the permit programs subject to this section are specified in subdivisions 1 through 4 of this subsection.

1. 9VAC5-80-1170 for the minor new source review (minor NSR) program.
2. 9VAC5-80-1460 for the federal hazardous air pollutant new source review (NSR) program.
3. 9VAC5-80-1775 for the Prevention of Significant Deterioration (PSD) program.
4. 9VAC5-80-2070 for the nonattainment major new source review (NSR) program.

B. Requests for board consideration shall contain the following information:

1. The name, mailing address, and telephone number of the requester;
2. The names and addresses of all persons for whom the requester is acting as a representative (for the purposes of this requirement, an unincorporated association is a person);
3. The reason why board consideration is requested;
4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or preliminary determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, amendment, or revocation of the permit in question; and
5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law.

C. Upon completion of the public comment period on a permit action, the director shall review all timely requests for board consideration filed during the public comment period on the permit action and within 30 calendar days following



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# Regulations

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the expiration of the time period for the submission of requests shall grant board consideration after the public hearing, unless the permittee or applicant agrees to a later date, if the director finds the following:

1. That there is a significant public interest in the issuance, denial, amendment, or revocation of the permit in question as evidenced by receipt of a minimum of 25 individual requests for board consideration;
2. That the requesters raise substantial, disputed issues relevant to the issuance, denial, amendment, or revocation of the permit in question; and
3. That the action requested by the interested party is not on its face inconsistent with, or in violation of, the Virginia Air Pollution Control Law, federal law or any regulation promulgated thereunder.

D. Either the director or a majority of the board members, acting independently, may request a meeting of the board to be convened within 20 days of the director's decision pursuant to subsection C of this section in order to review such decision and determine by a majority vote of the board whether or not to grant board consideration, or to delegate the permit to the director for the director's decision. For purposes of this subsection, if a board meeting is held via electronic communication, ~~the board shall have at least one forum open to the public and individual board members may participate from any location regardless of whether it is open to the public~~ the meeting shall be held in compliance with the provisions of § 2.2-3708 of the Virginia Freedom of Information Act, except that a quorum of the board is not required to be physically assembled at one primary or central meeting location. Discussions of the board held via such electronic communication means shall be specifically limited to a (i) review of the director's decision pursuant to subsection C of this section, (ii) determination of the board whether or not to grant board consideration, or (iii) delegation of the permit to the director for the director's decision. No other matter of public business shall be discussed or transacted by the board during any such meeting held via electronic communication.

E. The director shall, forthwith, notify by mail at ~~the director's~~ his last known address (i) each requester and (ii) the applicant or permittee of the decision to grant or deny board consideration.

F. In addition to subsections C, D, and E of this section, the director may, in his discretion, submit a permit action to the board for its consideration.

G. After the close of the public hearing comment period, the board shall, at a regular or special meeting, take final action on the permit. Such decision shall be issued within 90 days of the close of the public comment period or from a later date, as agreed to by the permittee or applicant and the board or the director.

H. Persons who commented during the public comment period shall be afforded an opportunity at the board meeting when final action is scheduled to respond to any summaries of the public comments prepared by the department for the board's consideration subject to such reasonable limitations on the time permitted for oral testimony or presentation of repetitive material as are determined by the board.

I. In making its decision, the board shall consider (i) the verbal and written comments received during the public comment period made part of the record, (ii) any explanation of comments previously received during the public comment period made at the board meeting, (iii) the comments and recommendation of the department, and (iv) the agency files. When the decision of the board is to adopt the recommendation of the department, the board shall provide in writing a clear and concise statement of the legal basis and justification for the decision reached. When the decision of the board varies from the recommendation of the department, the board shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the variation and how the board's decision is in compliance with applicable laws and regulations. The written statement shall be provided contemporaneously with the decision of the board. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.

## **9VAC5-80-35. Public hearings to contest permit actions.**

A. During the public comment period on a permit action, interested persons may request a public hearing on the permit action pursuant to the requirements of this section. The public participation process requirements for the permit programs subject to this section are specified in subdivisions 1 and 2 of this subsection.

1. 9VAC5-80-270 and 9VAC5-80-670 for the federal (Title V) operating permit program.
2. 9VAC5-80-1020 for the state operating permit program.

B. Requests for a public hearing shall contain the following information:

1. The name, mailing address, and telephone number of the requester;
2. The names and addresses of all persons for whom the requester is acting as a representative (for the purposes of this requirement, an unincorporated association is a person);
3. The reason why a public hearing is requested;
4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or preliminary determination, including an explanation of how and to what extent such interest would be directly and adversely

affected by the issuance, denial, amendment, or revocation of the permit in question; and

5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law.

C. Upon completion of the public comment period on a permit action, the director shall review all timely requests for public hearing filed during the public comment period on the permit action and within 30 calendar days following the expiration of the time period for the submission of requests shall grant a public hearing, unless the permittee or applicant agrees to a later date, if the director finds the following:

1. That there is a significant public interest in the issuance, denial, amendment, or revocation of the permit in question as evidenced by receipt of a minimum of 25 individual requests for a public hearing;
2. That the requesters raise substantial, disputed issues relevant to the issuance, denial, amendment, or revocation of the permit in question; and
3. That the action requested by the interested party is not on its face inconsistent with, or in violation of, the Virginia Air Pollution Control Law, federal law or any regulation promulgated thereunder.

D. Either the director or a majority of the board members, acting independently, may request a meeting of the board to be convened within 20 days of the director's decision pursuant to subsection C of this section in order to review such decision and determine by a majority vote of the board whether or not to grant a public hearing. For purposes of this subsection, if a board meeting is held via electronic communication, ~~the board shall have at least one forum open to the public and individual board members may participate from any location regardless of whether it is open to the public~~ the meeting shall be held in compliance with the provisions of § 2.2-3708 of the Virginia Freedom of Information Act, except that a quorum of the board is not required to be physically assembled at one primary or central meeting location. Discussions of the board held via such electronic communication means shall be specifically limited to a (i) review of the director's decision pursuant to subsection C of this section, (ii) determination of the board whether or not to grant a public hearing, or (iii) delegation of the permit to the director for the director's decision. No other matter of public business shall be discussed or transacted by the board during any such meeting held via electronic communication.

E. The director shall, forthwith, notify by mail at ~~the director's~~ his last known address (i) each requester and (ii) the applicant or permittee of the decision to grant or deny a public hearing.

F. In addition to subsections C, D, and E of this section, the director may, in the director's discretion, convene a public hearing on a permit action.

G. If a determination is made to hold a public hearing, the director shall schedule the hearing at a time between 45 and 75 days after mailing of the notice required by subsection E of this section.

H. The director shall cause, or require the applicant to publish, notice of a public hearing to be published once, in a newspaper of general circulation in the city or county where the facility or operation that is the subject of the permit or permit application is located, at least 30 days before the hearing date.

I. The director may, on the director's own motion or at the request of the applicant or permittee, for good cause shown, reschedule the date of the public hearing. In the event the director reschedules the date for the public hearing after notice has been published, the director shall, or require the applicant to, provide reasonable notice of the new date of the public hearing. Such notice shall be published once in the same newspaper where the original notice was published.

J. Public hearings held pursuant to these procedures may be conducted by (i) the board at a regular or special meeting of the board and shall be presided over by a member of the board. Public hearings may be held before less than a quorum of the board, or (ii) one or more members of the board. A member of the board shall preside over the public hearing.

K. The presiding board member shall have the authority to maintain order, preserve the impartiality of the decision process, and conclude the hearing process expeditiously. The presiding board member, in order to carry out his responsibilities under this subsection, is authorized to exercise the following powers, including but not limited to:

1. Prescribing the methods and procedures to be used in the presentation of factual data, arguments, and proof orally and in writing including the imposition of reasonable limitations on the time permitted for oral testimony;
2. Consolidating the presentation of factual data, arguments, and proof to avoid repetitive presentation of them;
3. Ruling on procedural matters; and
4. Acting as custodian of the record of the public hearing causing all notices and written submittals to be entered in it.

L. The public comment period will remain open for 15 days after the close of the public hearing if required by § 10.1-1307.01 of the Code of Virginia.

M. When the public hearing is conducted by less than a quorum of the board, the department shall, promptly after the

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close of the public hearing comment period, make a report to the board.

N. After the close of the public hearing comment period, the board shall, at a regular or special meeting, take final action on the permit. Such decision shall be issued within 90 days of the close of the public comment period or from a later date, as agreed to by the permittee or applicant and the board or the director.

O. When the public hearing was conducted by less than a quorum of the board, persons who commented during the public comment period shall be afforded an opportunity at the board meeting when final action is scheduled to respond to any summaries of the public comments prepared by the department for the board's consideration subject to such reasonable limitations on the time permitted for oral testimony or presentation of repetitive material as are determined by the board.

P. In making its decision, the board shall consider (i) the verbal and written comments received during the public comment period made part of the record, (ii) any explanation of comments previously received during the public comment period made at the board meeting, (iii) the comments and recommendation of the department, and (iv) the agency files. When the decision of the board is to adopt the recommendation of the department, the board shall provide in writing a clear and concise statement of the legal basis and justification for the decision reached. When the decision of the board varies from the recommendation of the department, the board shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the variation and how the board's decision is in compliance with applicable laws and regulations. The written statement shall be provided contemporaneously with the decision of the board. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.

VA.R. Doc. No. R10-1888; Filed September 15, 2009, 10:44 a.m.

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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 in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The State Board of Health will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Titles of Regulations:** **12VAC5-130. Notice and Description of Shellfish Area Condemnation (repealing 12VAC5-130-10).**

**12VAC5-140. Notices of Establishment and Description of Seasonally Condemned Areas at Marina Facilities (repealing 12VAC5-140-10).**

**12VAC5-160. Regulations for the Sanitary Control of the Picking, Packing and Marketing of Crab Meat for Human Consumption (repealing 12VAC5-160-60 through 12VAC5-160-1080).**

**12VAC5-180. State Plan for the Administration of the Virginia Shellfish Sanitation Program (repealing 12VAC5-180-10).**

**Statutory Authority:** § 28.2-801 of the Code of Virginia.

**Effective Date:** November 15, 2009.

**Agency Contact:** Bob Croonenberghs, Ph.D., Director, Shellfish Sanitation, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7477, or email bob.croonenberghs@vdh.virginia.gov.

**Background:** 12VAC5-130 and 12VAC5-140 were created in connection with the State Health Commissioner's authority to issue condemnations on a case-by-case basis pursuant to law. At the advent of the Virginia Administrative Code, some confusion existed on what should be included and these two chapters were incorporated, perhaps out of a desire to err on the side of being overly inclusive.

Certain provisions of 12VAC5-160 were adopted in 1965. The outcome of the adoption process ended with five general, noncontroversial rules adopted as "regulations" and numerous specific details, some of which were controversial and adopted as "standards," although they appear as regulatory requirements. When the Virginia Administrative Code was set up, the "standards" and the "regulations" were combined together and all were put forward as regulations. At the advent of the Virginia Administrative Code, some confusion existed on what should be included. In short, the agency sought to be overly inclusive in what it determined to be "regulation." The board has decided to remove these "standards" (Parts II through XVIII) from VAC since they do not have the force of law. Following a court case in which 12VAC5-160 was challenged, and upon advice of the Office of the Attorney General, received October 20, 2008, the agency has determined that text purporting to be regulations contained in 12VAC5-160-60 through 12VAC5-160-1080 were never properly promulgated or adopted. This text was, in fact, erroneously certified to the Registrar of Regulations as being effective regulations when the Virginia Administrative Code was compiled. Based on advice from the Office of the Attorney General, this erroneous certification was a technical error, which qualifies the action to repeal

these regulations as exempt from the Administrative Process Act pursuant to § 2.2-4006 A 3 of the Code of Virginia.

12VAC5-180 contains a plan of correction that the Department of Health entered into with federal authorities. The agency has long achieved and maintained compliance with the federal requirements at issue and, like the texts discussed above, this plan's inclusion was brought about by an overly inclusive net in determining what is regulation, and should be deleted from VAC in this housekeeping step.

Summary:

*This regulatory action repeals three entire chapters (12VAC5-130, 12VAC5-140, and 12VAC5-180) of the Virginia Administrative Code and Parts II through XVIII of 12VAC5-160 as the State Board of Health has determined that these regulations were inadvertently promulgated as regulations.*

**Part II  
Water Supply**

**12VAC5-160-60. Requirements generally. (Repealed.)**

~~The water supply shall meet the State Health Department requirements for a public water supply. Existing supplies which do not fully meet these requirements may be accepted provided construction and bacterial quality are satisfactory.~~

**12VAC5-160-70. Cross connections. (Repealed.)**

~~There shall be no cross connections between an approved supply and an unapproved supply.~~

**12VAC5-160-80. Unapproved sources. (Repealed.)**

~~Water from an unapproved source shall not be used in any part of the plant, nor in the cooking and dock area where cooked crabs are handled in any manner.~~

**12VAC5-160-90. Wells. (Repealed.)**

~~Wells should be located at least 50 feet horizontally from mean high water in ground having a surface elevation of at least three feet above mean high water. Where conditions do not permit these distances to be met special design features will be required.~~

**12VAC5-160-100. Sufficient water. (Repealed.)**

~~Sufficient water shall be available under pressure for all plant needs.~~

**Part III  
Sewage Disposal**

**12VAC5-160-110. Discharge into public sewers. (Repealed.)**

~~Sewage shall be discharged into public sewers wherever possible. Where private sewage disposal systems must be utilized, they shall be constructed according to state and local~~

~~requirements; provided, that privies shall be acceptable only where water carriage systems are not feasible.~~

**12VAC5-160-120. Sewage facilities. (Repealed.)**

~~Privies, septic tanks and subsurface tile systems shall be located at least 50 feet horizontally from mean high water in ground having a surface elevation of at least three feet above mean high water.~~

**Part IV  
Plant Arrangement**

**12VAC5-160-130. Separate rooms. (Repealed.)**

~~Separate rooms shall be provided for the picking and packing of crab meat.~~

**12VAC5-160-140. Facilities for cooling cooked crabs. (Repealed.)**

~~A room separate from that provided for in 12VAC5-160-130 shall be provided for the cooling of cooked crabs except where suitable arrangements are made in the picking room for this purpose; and except where suitable arrangements are made in the cooking room for this purpose, provided that while it is being used for cooling cooked crabs it shall not be used for the handling or storage of uncooked crabs, and further provided that the construction and arrangement shall give adequate protection to the cooked crabs from flies, insects, rodents, dust, plant traffic and the washing down operation. This room and refrigeration room for cooked crabs, if provided, shall open directly into the picking room, or screened in area or passageway through which crabs are transported after cooling.~~

**12VAC5-160-150. Facilities for cooking crabs. (Repealed.)**

~~A room or roofed over area separate from that provided for in 12VAC5-160-130 and 12VAC5-160-140, in or adjoining the plant, shall be provided for the cooking of crabs.~~

**12VAC5-160-160. Routine operation. (Repealed.)**

~~Adequate space shall be provided for all routine operations.~~

**12VAC5-160-170. Space for pickers. (Repealed.)**

~~Adequate space shall be provided for each picker. Minimum spacing shall be (i) six feet between picking tables when pickers are sitting back to back; (ii) five feet between picking table and plant equipment when pickers are sitting on equipment side of table; (iii) five feet between picking table and wall beside which there is a service passageway, when pickers are sitting on the service passageway side of the table; (iv) four feet between wall and table when pickers are sitting between table and wall beside which there is no passageway; (v) and three linear feet of table per picker except plants in operation at the time of the adoption of these standards having spacings approved, which are less than the preceding five and six foot requirements, shall be permitted to continue~~

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to use such approved spacings provided they are not less than 4 1/2 feet.

## **12VAC5-160-180. Employee storage space. (Repealed.)**

Rooms or lockers shall be provided accessible from the picking and packing rooms for storing clothing and aprons of the employees. It is permissible to use one room for a lunch and clothing room provided it is adequate in size for both purposes.

## **12VAC5-160-190. Lockers. (Repealed.)**

Well constructed "pigeonholes" or lockers shall be provided in the picking and packing rooms for pocketbooks, lunches and other small personal articles if such articles are kept in these rooms.

## **12VAC5-160-200. Storage rooms. (Repealed.)**

Protected storage rooms or areas shall be provided for the containers in which crab meat is to be packed, and for shipping barrels, boxes or containers.

## **12VAC5-160-210. Backing or bobbing of crabs. (Repealed.)**

Where "backing" or "bobbing" of crabs is practiced, it shall be done in an approved area separate from the picking and packing operations.

## **12VAC5-160-220. Retail activity. (Repealed.)**

Where there is retail activity, the area used by customers shall be partitioned off from the packing room.

## **12VAC5-160-230. New construction. (Repealed.)**

On new construction floor levels shall be at least three feet above mean high water.

### Part V

#### Floors, Walls and Ceilings

## **12VAC5-160-240. Floors. (Repealed.)**

Floors shall be constructed of high quality concrete or other material impervious to water, graded to drain quickly, free from cracks, ruts, and uneven surfaces that interfere with proper cleaning or drainage, and maintained in good repair; provided, that floors of storage rooms for containers into which crab meat is to be packed, and for shipping barrels, boxes, or containers, and also rooms used for the storing of clothing, need not be impervious or graded to drain.

## **12VAC5-160-250. Walls and ceilings. (Repealed.)**

Interior walls and ceilings of plant shall be of tile, concrete, cement plaster, concrete blocks, painted wood, or equivalent material maintained in good repair, having a smooth, washable light colored surface which will endure repeated washings, free from cracks, ledges, and shelves where dust and debris may collect. Doors and windows shall be properly fitted and maintained in good repair.

### Part VI Vermin Control

#### Article 1

##### Flies

## **12VAC5-160-260. Screening. (Repealed.)**

Any opening through which flies can enter any section of the plant, other than the cooking room or area if unenclosed, shall be effectively covered with screening of not less than 16 mesh per inch and maintained in good condition; except that well fitted solid doors may be used instead of screen doors.

## **12VAC5-160-270. Doors and windows. (Repealed.)**

Screen doors and windows shall be well fitted.

## **12VAC5-160-280. Main doors. (Repealed.)**

At the main passage doors, a fan mounted above the door opening with the stream of air filling the space and directed downward, or vestibule with two self closing doors located far enough apart so that one person or conveyance passing through will not have both open at the same time, or other effective means, shall be provided to keep out flies.

## **12VAC5-160-290. Shipping doors. (Repealed.)**

Doors through which the finished product is removed for shipping, if so located that flies can enter to processing parts of the plant, shall have a fan mounted above with the stream of air filling the space and directed downward, or be provided with other effective means to keep out flies.

## **12VAC5-160-300. Inside toilets. (Repealed.)**

Inside toilets shall have vestibules or equal, with two self closing doors far enough apart so that one person passing through will not have both open at the same time; or shall be so located in the plant that a self closing door in addition to the self closing door on the toilet room itself will be between the toilet and any processing portion of the plant.

## **12VAC5-160-310. Outside toilets. (Repealed.)**

Privies and outside toilets shall be fly tight with self closing doors opening outward.

## **12VAC5-160-320. Maintenance. (Repealed.)**

Fly protection shall be adequate and maintained.

## **12VAC5-160-330. Prevention of fly breeding. (Repealed.)**

Conditions arising from the operation of the plant or related industry as the result of improper handling of crab scrap and crab shells, which promote fly breeding in nearby areas surrounding the plant, shall be prevented.

Article 2  
Rodents, Roaches, Etc.

**12VAC5-160-340. Requirement. (Repealed.)**

The entire plant shall be rodent proof and so maintained.

**12VAC5-160-350. Continued program. (Repealed.)**

The plant manager shall carry on a continued surveillance program of plant and premises. Where the presence of rodents, roaches, etc., is evidenced, extermination measures shall be immediately begun. Extermination should preferably be done by licensed pest control operators.

**12VAC5-160-360. Use of poisons. (Repealed.)**

Rodenticides and insecticides shall not be used in any way as to contaminate the product, equipment or utensils, nor to constitute hazards to employees.

**12VAC5-160-370. Storage of poisons. (Repealed.)**

Rodenticides which are highly toxic to humans shall not be stored in processing plants.

**12VAC5-160-380. Toxicity of poisons. (Repealed.)**

Rodenticides and insecticides needed to be kept on hand shall be low in toxicity to humans, prominently labeled and stored in cabinets which are used for no other purpose.

Part VII  
Lighting, Heating and Ventilation

**12VAC5-160-390. Requirements. (Repealed.)**

Ample natural or artificial light shall be provided in all working and storage rooms or areas, including toilets and privies.

The table below constitutes ample lighting:

Type of Area	Foot-Candles of Illumination*
Working surfaces in packing rooms	25
Picking tables and utensil washing areas	25
Storage room, cold storage rooms, toilets or privies	5**

\*Approximate measure as incident light

\*\*Measured 30 above floor.

**12VAC5-160-400. Temperature. (Repealed.)**

A comfortable working temperature shall be maintained in the picking and packing rooms.

**12VAC5-160-410. Ventilation. (Repealed.)**

Ventilation shall be sufficient to eliminate odors, discomfort, and excessive condensation.

Part VIII

Plumbing, Cooking and Heating, Utensil Washing Facilities, Hand Washing Facilities, and Toilets or Privies

**12VAC5-160-420. Plumbing in new construction. (Repealed.)**

In new construction plumbing shall be installed and maintained in compliance with applicable local codes, except where there are none, in which event installations shall be made in compliance with the Virginia State Plumbing Code.

**12VAC5-160-430. Plumbing design. (Repealed.)**

Plumbing facilities and equipment shall be constructed and located so as to permit no splashing of water onto picking tables, packing tables, meat to be or already packed, packing cans, picking pans in transit, unpicked cooked crabs, or shelf of the window through which picked crab meat is delivered to the packing room. This equipment shall be so placed as to facilitate the flow of plant activities, and in relation to use, while at the same time avoiding crowded conditions.

**12VAC5-160-440. Water connections. (Repealed.)**

Easily accessible and ample water connections with standard faucet and hose bib shall be provided in all working areas in the plant to facilitate washing and cleansing of plant and equipment. Hoses shall be continually available in each main working area.

**12VAC5-160-450. Overhead lines. (Repealed.)**

There shall be no overhead sewers or drain lines in the plant except they may be placed above offices and toilet rooms.

**12VAC5-160-460. Pressure cookers. (Repealed.)**

Pressure cookers shall be equipped with a pressure gauge and a vent for exhausting air. This and any other vent, drain or exhaust outlet shall terminate at least two feet above mean high water. Pressure gauges, exhaust vents, drains and relief valves on the pressure cookers shall be so designed that they can be easily maintained in working condition.

**12VAC5-160-470. Hot water. (Repealed.)**

Hot water sufficient for all plant needs shall be supplied by coils in the steam boiler, if automatically fired, or by an automatically controlled hot water heater.

**12VAC5-160-480. Sinks. (Repealed.)**

A. A double compartment sink of the laundry type or better shall be provided in the picking room for every 30 pickers. Each compartment shall be provided with hot and cold water faucets. The drain shall not be directly connected to a sewer.

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These facilities shall be used for washing pans and utensils, and shall not be used for hand washing.

B. Adjacent to the facilities required by subsection A of this section, a container of suitable construction shall be provided for the sole purpose of dipping picking pans in an approved sanitizing solution of adequate strength.

C. During the day's operation, both of the compartments of the double compartment sink shall be used for cleansing the picking pans under running water (no standing water permitted except at the end of the day's run); after cleansing, the pans shall be dipped into the container of sanitizing solution; pans shall be cleansed and sanitized after each delivery of crab meat to the picking room.

D. At the end of the day's run, one compartment of the double compartment sink shall be filled with hot water and cleanser or detergent, and used for the cleansing of the utensils; the solution of water and cleanser or detergent shall be changed as frequently as necessary to assure thorough cleaning of all utensils. The other compartment of the double compartment sink shall be kept free of standing water and used, first for rinsing the meat from the utensils before cleansing, and second for rinsing the wash water from the utensils after cleansing.

E. It is suggested that one individual be assigned to each double compartment sink to wash all utensils rather than have each picker wash his own.

F. Detergents and other cleansers and supplies shall be kept available at utensil washing sinks.

## **12VAC5-160-490. Hand washing facilities. (Repealed.)**

A. There shall be one hand washing lavatory or equal located in the picking room for every 20 pickers, except in new construction which shall meet applicable local codes; where there are no local codes, installations shall be made in compliance with the Virginia State Plumbing Code.

B. There shall be one hand washing lavatory located in the packing room for use by packing room employees.

C. Hand washing lavatories shall be conveniently located and also shall be so located that the person responsible for supervision can readily observe that employees wash their hands before beginning work and after each absence from post of duty or hand contact with unprotected or contaminated surfaces.

D. Hand washing lavatories shall be provided with an approved (designed for the facility) combination faucet unless the hot water faucet is connected to a controlled temperature source that will provide a water temperature of at least 100°F, with a maximum of 115°F, and shall be suitably drained to prevent splashing on the floor where the facilities are in use.

E. Adjacent to these lavatories a container of suitable construction shall be provided for the sole purpose of

sanitizing the hands in an approved solution of adequate strength.

F. There shall be a supply of liquid or powdered soap and single use towels, with proper dispensing facilities, available within reach of the lavatories.

G. Lavatories shall be maintained in proper operating condition and kept free of standing water.

H. Appropriate hand washing signs shall be posted in toilets or privies, and at conspicuous places in both packing and picking rooms, and at the hand washing lavatories.

I. Lavatories shall be used for hand washing only and shall not be used for washing picking pans or other utensils.

J. Lavatories shall be so located as to minimize the possibility of these facilities being used for washing picking pans or other utensils, that is, away from the picking pan and utensil washing facilities.

## **12VAC5-160-500. Toilet or privy requirements. (Repealed.)**

A. At least one water closet or privy seat shall be provided for every 20 employees; except in new construction of water closets which shall meet applicable local codes; where there are no local codes, installations shall be made in compliance with the Virginia State Plumbing Code.

B. Separate toilets or privies conveniently located shall be provided for each sex.

C. Maintenance and operation shall be such that toilets or privies (room and fixtures) are properly illuminated (illumination table in 12VAC5 160 390), ventilated, kept clean, provided with tissue and dispenser; wastes are inaccessible to flies and rodents; and there is no evidence of outside human defecation or urination about the plant premises. Ventilation shall be by direct opening to the outer air or exhaust fans designed to move air at a rate of two cu. ft./min./sq. ft. of floor area.

### **Part IX**

#### **Construction of Equipment and Utensils**

## **12VAC5-160-510. Tables. (Repealed.)**

A. New picking and packing tables shall be made with metal frames and legs; construction joints shall be made by welding and ground to a smooth surface; table top food contact surfaces shall be made without seams or butt joints; table tops shall be made of type 302 or 304 stainless steel, No. 4 finish or better on exposed surfaces, and 18 gauge or heavier; except that construction and material may be better than here stated; and fabrication shall be such as to avoid accumulation of organic material at edge and underside of table and be easily cleanable.

B. Frames and legs of existing tables, if not of corrosion resistant metal, shall be of smooth finish and painted a light color with washable paint.

C. Seams, joints, nail or screw heads in existing tables shall be filled with solder and dressed to a smooth surface and so maintained.

D. If wall tables are used, the backs of the tables shall extend at least 24 inches upward; except for existing wall tables in use at the time of adoption of these standards.

**12VAC5-160-520. Stools. (Repealed.)**

Stools shall be of finished wood or better, painted a light color with washable paint, and so constructed that all hand contact surfaces can be easily cleaned and sanitized. Seat cushions shall be permitted only if they are securely fastened and do not cover entire seat, thus minimizing the probability of hand contact with cushions.

**12VAC5-160-530. Equipment for transporting cooked crabs. (Repealed.)**

Dumping boards or platforms, tubs or other conveyances for transporting cooked crabs, tray or stand for scales, tray on scales, pickers' pans and "backed" and "bobbed" crab washers shall be constructed of a corrosion resistant, nontoxic, nonabsorbent material which will not readily crack, buckle or disintegrate. Surfaces contacting cooked crabs or picked meat shall have no exposed screw, bolt or rivet heads. Equipment shall be constructed so as to be easily cleanable and maintained in good repair. In new equipment, joints in the contact areas shall be welded and ground to a smooth finish. Internal angles of fabrication shall be filleted or have an internal radius of at least 1/4 inch.

**12VAC5-160-540. Utensils. (Repealed.)**

"Lap boards," knives, "claw breakers," and the scoop and handle socket portions of crab and ice shovels shall be of one piece corrosion resistant metal, easily cleanable, and maintained in good repair.

**12VAC5-160-550. Transport of retort baskets. (Repealed.)**

Carts, hand trucks, dollies, etc., used for transporting retort baskets from cookers to cooling rooms or storage, and racks in these rooms to support the baskets above the floor, shall have contact surfaces of smooth corrosion resistant metal. Frames, if not of corrosion resistant metal, shall be of smooth finish and painted with a washable paint.

**12VAC5-160-560. New processes. (Repealed.)**

Equipment of new design necessitated by new processes shall be reviewed with the Division of Shellfish Sanitation before it is put into operation.

**Part X  
Supervision**

**12VAC5-160-570. Compliance responsibility. (Repealed.)**

The owner or plant manager shall either personally supervise or shall designate an individual to supervise and be responsible for the compliance with the sections of this manual which apply to plant sanitation, personnel, and operation. Practices observed which might contaminate cooked crabs or crab meat, or otherwise tend to produce an unacceptable product, even though not covered specifically in the manual, shall be immediately stopped.

**Part XI  
Health and Cleanliness of Personnel**

**12VAC5-160-580. Diseases and infections. (Repealed.)**

Persons, while affected with a disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infected wounds, or an acute respiratory infection, shall be excluded from the plant.

**12VAC5-160-590. Daily checks. (Repealed.)**

Daily observations or inquiries of employees shall be made by the manager or supervisor to detect any sign of illness among employees.

**12VAC5-160-600. Reports required. (Repealed.)**

Report shall be made to the local health authority when an employee is known or suspected of having a disease in communicable form.

**12VAC5-160-610. Hand cleanliness. (Repealed.)**

Employees shall wash their hands thoroughly with warm water and soap, then dip them in an approved sanitizing solution before beginning work and prior to returning to work after leaving working area, or after contact with any unprotected surface or other source of contamination. Fingernails shall be short and clean, and rings shall not be worn while working.

**12VAC5-160-620. Clean garments and aprons. (Repealed.)**

Pickers, packers, and handlers of unpicked cooked crabs or picked meat shall wear clean outer garments and aprons. Aprons shall cover the front and sides of body. Caps or hair nets shall cover the hair. Arms shall be bare to the elbow or covered with approved type arm guards. Any type of protective clothing employing ruffles and gathering of material, as well as scrap plastic, shall not be used.

**12VAC5-160-630. Food and tobacco. (Repealed.)**

Employees shall not eat any food or use tobacco in any form in the picking or packing rooms.



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# Regulations

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## Part XII

### Cooling and Picking of Cooked Crabs

#### 12VAC5-160-640. ~~Cooling of hot crabs. (Repealed.)~~

~~Cooked crabs shall be immediately moved while hot into the cooling rooms or other protected area.~~

#### 12VAC5-160-650. ~~Picking of crabs. (Repealed.)~~

~~Cooked crabs shall be picked as soon as practical after cooking and cooling.~~

#### 12VAC5-160-660. ~~Hot weather. (Repealed.)~~

~~During hot weather operation, where refrigeration rooms are available, cooked crabs shall be chilled immediately after cooling and kept chilled until picked. Uncooked crabs, bait, fish, etc., shall not be stored in these cooling and chilling rooms while they are being used for the storage of cooked crabs.~~

#### 12VAC5-160-670. ~~Handling of crabs. (Repealed.)~~

~~As cooked crabs are removed from refrigeration room, care shall be taken to handle only small quantities to prevent undue warming of crabs before and during picking.~~

#### 12VAC5-160-680. ~~Contamination prevention. (Repealed.)~~

~~Every precaution shall be taken to prevent contamination of cooked crabs during routine operation.~~

#### 12VAC5-160-690. ~~Sanitation of surfaces. (Repealed.)~~

~~Hand contact surfaces of chairs, stools, and picking tables as well as picking table tops shall be sanitized, and the table tops rinsed with potable water prior to beginning each day's operation.~~

#### 12VAC5-160-700. ~~Picking knives. (Repealed.)~~

~~Picking knives shall be cleaned, sanitized, and rinsed before beginning work and shall not be padded with paper towels or rags.~~

#### 12VAC5-160-710. ~~Cleaning of tables. (Repealed.)~~

~~All crabs shall be "picked off" tables at least every four hours and the tables cleaned.~~

#### 12VAC5-160-720. ~~Sanitizing solutions. (Repealed.)~~

~~Separate sanitizing solutions, which shall not be used interchangeably, shall be maintained at proper strength during operations for pickers' hands, picking pans, and packing cans. Solutions shall be changed frequently enough to prevent accumulation of organic particles.~~

#### 12VAC5-160-730. ~~Paper towels. (Repealed.)~~

~~Paper towels shall be provided for the pickers to wipe their hands on during the picking operation.~~

## Part XIII

### Packing of Crab Meat

#### 12VAC5-160-740. ~~Packing temperature. (Repealed.)~~

~~Picked crab meat shall be packed and cooled to an internal temperature of 40°F or less within four hours after picking.~~

#### 12VAC5-160-750. ~~Sanitizing solutions. (Repealed.)~~

~~Separate sanitizing solutions, which shall not be used interchangeably, shall be maintained at proper strength during operations for packers' hands and packing cans. Solutions shall be changed frequently enough to prevent accumulation of organic particles.~~

#### 12VAC5-160-760. ~~Equipment surfaces. (Repealed.)~~

~~Surfaces of packing room equipment which come in contact with crab meat shall be sanitized and rinsed with potable water prior to beginning each day's operation and cleaned and sanitized at least every two hours thereafter. Wash down hoses shall not be allowed to come in contact with these surfaces.~~

#### 12VAC5-160-770. ~~Picking records. (Repealed.)~~

~~Chits or checks shall not be used. Records of quantities of meat picked by individuals may be kept in a ledger at the delivery window, or on a tally board, or by other sanitary methods.~~

#### 12VAC5-160-780. ~~Overages. (Repealed.)~~

~~Overages shall not be returned to pickers.~~

#### 12VAC5-160-790. ~~Repacking of meat. (Repealed.)~~

~~Repacking of crab meat which has been picked or processed in another plant shall not be allowed.~~

#### 12VAC5-160-800. ~~Labeling requirements. (Repealed.)~~

~~If mixing or blending of fresh, frozen, or pasteurized crab meat is done, the packing container label shall accurately identify contents.~~

## Part XIV

### Refrigeration of Crab Meat

#### 12VAC5-160-810. ~~Refrigeration room requirements. (Repealed.)~~

~~Refrigeration rooms for the packed product, which may be used for the infrequent storage of cooked crabs, shall be of sanitary construction with an impervious floor graded to drain quickly. The room shall be so constructed that it will not receive drainage from other portions of the plant. Drains shall not be connected directly to a sewer. Uncooked crabs, bait, fish, or related items shall not be stored in this room while it is being used for the storage of crab meat or cooked crabs; except that if the room is large enough a part may be partitioned off for the storage of these items, provided that the partition is at least four feet high and constructed of~~

impervious, easily cleanable material and that drainage from this part does not reach the packed product area, and further provided that cooked crabs shall not be stored in this room when any of these items are present.

**12VAC5-160-820. Ice boxes. (Repealed.)**

Ice boxes for the packed product shall be of sanitary construction with an impervious lining and have an effective drain.

**12VAC5-160-830. Size of rooms. (Repealed.)**

The refrigeration room or ice box shall be large enough and so constructed that a full day's production, with ice, can be conveniently stored. A thermometer shall be located in the room or box.

**12VAC5-160-840. Ice sources. (Repealed.)**

Ice shall preferably be manufactured in the plant, otherwise it shall be obtained from an approved source. Packers purchasing crushed ice shall secure it from dealers who handle, crush, and deliver it in a sanitary manner.

**12VAC5-160-850. Block ice. (Repealed.)**

Block ice shall be properly stored to avoid contact with contaminated surfaces and shall be thoroughly washed on an elevated metal stand or grating with a hose provided for this purpose before it is placed in the crushing machine. A corrosion resistant container shall be provided to catch the crushed ice falling from the crusher. Where the crusher is located in a protected portion of the refrigeration room, this container is not required.

**12VAC5-160-860. Cleaning of equipment. (Repealed.)**

All facilities and equipment employed in handling or preparing ice for use shall be used for no other purpose and shall be cleaned each day the plant is in operation. Shovels shall be hung or stored in a protected manner when not in use.

**12VAC5-160-870. Storing ice. (Repealed.)**

Where it is necessary to have ice in the packing room a metal lined container or compartment of sanitary construction shall be provided for the sole purpose of storing such ice manufactured in the plant, purchased crushed ice, or block ice that has been crushed in the plant; except that clean wooden barrels for shipping crab meat may be used for this purpose.

Part XV

Handling of Single Service Containers

**12VAC5-160-880. Sanitation of storage rooms. (Repealed.)**

Storage rooms for single service containers shall be kept clean, orderly, protected against weather, and free of rodent or insect infestation. Storage rooms shall not be used as a general store room for unused equipment and materials.

**12VAC5-160-890. Sanitation of containers. (Repealed.)**

Single service containers in the picking and packing rooms shall be kept on stands or tables at least two feet above the floor, and shall be protected against contamination by splash or floor washing, and sanitized, exclusive of plastic bags, immediately prior to filling.

**12VAC5-160-900. Display of certificate number. (Repealed.)**

Packer's certificate number shall be legibly impressed, embossed or lithographed in or on the sides of single service containers in which crab meat is packed, except when the lid becomes an integral part of the container during the sealing process the number may be on the lid; name and address of the firm or distributor shall be similarly marked on the container or lid. Plastic bags shall have the name and address of the packer or distributor and certification number of the packer permanently marked on them (hand stamping is unacceptable). Containers bearing a certificate number other than that of the respective plant shall not be allowed in plant.

**12VAC5-160-910. Sanitation of containers. (Repealed.)**

Clean shipping barrels, boxes or containers shall be used.

Part XVI  
Cleanliness

**12VAC5-160-920. Proper use of plants. (Repealed.)**

Plants shall be used only for crab meat processing during operating hours.

**12VAC5-160-930. Litter and rubbish. (Repealed.)**

Premises inside and outside shall be kept clean and free of litter and rubbish.

**12VAC5-160-940. Access to plants. (Repealed.)**

Animals and unauthorized persons shall be excluded from plants. Pickers shall not be allowed in packing room.

**12VAC5-160-950. Storage of equipment. (Repealed.)**

Miscellaneous and unused equipment and articles which are not necessary to plant operation shall not be stored in any processing portion or area of the plant.

**12VAC5-160-960. Schedule requirements. (Repealed.)**

Plants shall be cleaned within two hours after each day's run.

**12VAC5-160-970. Cleaning of equipment. (Repealed.)**

All equipment routinely used in the picking and packing process, for example, utensils, stools, tables, pans, tubs, shovels, dumping boards or platforms, lap boards, knives, scales, supports for scales, trays, "claw breakers", funnels, "backed" and "bobbed" crab washers, etc., shall be thoroughly and effectively cleansed within two hours after each day's run.

# Regulations

## **12VAC5-160-980. Adequate facilities and equipment. (Repealed.)**

Adequate clean up facilities, detergents and scouring equipment shall be available within the plant at all times. Paper dishcloths shall be used for cleaning purposes where practical. The use of cloth rags or sponge material in plant and equipment clean up shall not be allowed.

## **12VAC5-160-990. Sea water flooding. (Repealed.)**

When the floors of a plant have been flooded by high sea water levels, operation shall cease until the water has receded from the plant, after which the plant shall be thoroughly cleaned and sanitized before operation is again begun.

### Part XVII

#### Bactericidal Treatment of Utensils and Equipment

## **12VAC5-160-1000. Processing required. (Repealed.)**

All utensils and equipment which contact cooked crabs or crab meat during processing, after the cooker baskets through the final pack, shall be subjected to an effective bactericidal process after cleaning, within three hours after the end of each day's run.

## **12VAC5-160-1010. Temperature and timing. (Repealed.)**

Effective bactericidal treatment shall be accomplished by exposure for at least 15 minutes to a temperature of at least 170°F, or for at least five minutes to a temperature of at least 200°F, in a steam cabinet, except as provided in 12VAC5-160-1020, equipped with an indicating thermometer\* located in the coldest zone. Steam cabinets shall be constructed with a vent or valve in bottom to permit discharge of air, of such size as to store, treat, and protect all equipment at one time, with the exception of large equipment, without nesting any of the picking pans or stacking any of "claw breakers."

\*Thermometers shall be accurate to within 2°F, shall have scale divisions not greater than 2°F, and shall be so installed as to be easily read. Accuracy of thermometer should be checked at least once each year by the Division of Shellfish Sanitation.

## **12VAC5-160-1020. Chemical treatments. (Repealed.)**

Chemical bactericidal treatment shall be given large equipment, such as picking and packing tables, dumping boards or platforms, tubs and crab shovels and shall be accomplished by immersion or exposure for at least two minutes to a flow of a solution containing not less than 50 parts per million of free chlorine or other bactericide approved by the Division of Shellfish Sanitation, such as the "iodine complex" in proper strength; or if bactericidal sprays having free chlorine are used, the strength shall not be less than 100 parts per million.

Amounts of Chlorine Compounds Required to Give Approximately 100 P.P.M. of Chlorine by Readily

Volume of Water (gallons)	Available Measuring Devices				
	Dry Chlorine Compounds Available Chlorine			Liquid Hypochlorite Solutions— Available Chlorine	
	15%	25%	70%	1%	5%
20	5 1/2 tbs.	3 1/2 tbs.	1 1/2 tbs.	3 cups	10 tbs.
40	11 tbs.	6 1/2 tbs.	2 1/2 tbs.	3 pts.	1 1/4 cups
60	1 cup	10 tbs.	3 1/2 tbs.	4 3/4 pts.	2 cups
80	1 2/5 cups	13 1/2 tbs.	4 1/2 tbs.	6 1/2 pts.	2 1/2 cups
100	1 4/5 cups	1 cup	6 tbs.	4 qts.	3 cups
150	2 3/4 cups	1 1/2 cups	9 tbs.	6 qts.	4 3/4 cups
200	3 3/5 cups	2 cups	12 tbs.	2 gals.	3 pts.

Dry Measure	Liquid Measure
1 tablespoon (tbs.) — approximately 0.3 ounce.	1 tablespoon or 3 teaspoons — approximately 15 milliliters.
1 cup or 1/2 pint — approximately 5 ounces.	1 cup or 1/2 pint — approximately 16 tablespoons.

### Part XVIII

#### Crab Scrap Disposal

## **12VAC5-160-1030. Collection of seraps. (Repealed.)**

Suitable containers constructed of galvanized iron, good quality plastic, or equal, shall be provided in the picking room for the collection of crab scrap. These shall be thoroughly cleaned and sanitized at the end of each day's run.

## **12VAC5-160-1040. Floors to be kept clean. (Repealed.)**

Crab scrap shall not be allowed to accumulate on the floor.

## **12VAC5-160-1050. Conveyances to preclude spillage. (Repealed.)**

Conveyances used to move crab scrap from plant to scrap bin shall be so constructed as to preclude spillage. These conveyances shall be cleaned at the end of each day's run.

**12VAC5-160-1060. ~~Conveyors. (Repealed.)~~**

~~If conveyors are used, they shall be constructed so as to facilitate cleaning and shall be cleaned at the end of each day's run.~~

**12VAC5-160-1070. ~~Scrap bins. (Repealed.)~~**

~~Scrap bins shall be provided and maintained of easily cleanable concrete construction or equal, adequate in size to hold an entire day's scrap, well drained and curbed to prevent washings from reaching the ground surfaces. Scrap bins shall be located away from the doors of the plant and emptied and cleaned daily.~~

**12VAC5-160-1080. ~~Commercial disposal. (Repealed.)~~**

~~Should commercial disposal methods be used, the plant operator shall not be relieved of his responsibility for the proper handling of scrap.~~

VA.R. Doc. No. R10-2074; Filed September 16, 2009, 11:38 a.m.

**TITLE 16. LABOR AND EMPLOYMENT**

**SAFETY AND HEALTH CODES BOARD**

**Final Regulation**

**REGISTRAR'S NOTICE:** The following regulation is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **16VAC25-90. Federal Identical General Industry Standards (amending 16VAC25-90-1910.1020).**

**16VAC25-100. Federal Identical Shipyard Employment Standards (amending 16VAC25-100-1915.1001).**

Statutory Authority: § 40.1-22 of the Code of Virginia.

Effective Date: November 15, 2009.

Agency Contact: John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, TTY (804) 786-2376, or email john.crisanti@doli.virginia.gov.

Summary:

*As part of the ongoing review of its regulations, federal OSHA amended various safety and health standards in*

*need of corrections, housekeeping changes, or technical amendments. The revisions do not affect the substantive requirements or coverage of the standards involved, modify or revoke existing rights and obligations, or establish new rights and obligations. The revisions include updating references from existing OSHA standards, including standards governing occupational noise exposure, vinyl chloride, inorganic arsenic, lead, cadmium, coke oven emissions, and bloodborne pathogens. During its June 19, 2006, meeting, the board adopted the preponderance of various corrections and technical amendments to Parts 1910 – General Industry, 1915 – Shipyard Employment, and 1926 – Construction, as published in 71 FR 16669 on April 3, 2006. It did not, however, adopt any amendments that substituted "29 CFR 1910.1020" for "29 CFR 1910.20" when referencing the regulation for Access to Employee Exposure and Medical Records [items 1, 34 and 36] because the Virginia unique regulation [16VAC25-80 (29 CFR 1910.20)], not the current federal regulation, 29 CFR 1910.1020, was in effect in Virginia at that time. Additionally, in 29 CFR Part 1913, "Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records" under item 34 [p. 16674], paragraph (n) was removed because it specified an effective date that expired over 20 years ago. As a result of a recent periodic review of current regulations, the board repealed its Virginia unique version of Access to Employee Exposure and Medical Records [16VAC25-80 (29 CFR 1910.20)] and adopted the federal regulation, 29 CFR 1910.1020. The board thereby adopted federal OSHA changes relating to this regulation. The effective date of the newly adopted regulation is August 20, 2009.*

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910, General Industry Standards, and 29 CFR Part 1915, Shipyard Employment Standards, are declared documents generally available to the public and appropriate for incorporation by reference. For this reason the documents will not be printed in the Virginia Register of Regulations. The documents are available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 9th and Broad Streets, Richmond, Virginia 23219.

Statement of Final Agency Action: On August 13, 2009, the Safety and Health Codes Board adopted federal OSHA's revised final rule for Corrections and Technical Amendments to Parts 1910 and 1915 (for those provisions which, among other things, removed "29 CFR 1910.20" and added in its place "29 CFR 1910.1020" in items 1, 34 and 36), as published in 71 FR 16669 on April 3, 2006. Except for the aforementioned changes, all other corrections and technical amendments in this 2006 revision were adopted by the board on June 19, 2006, and became effective on September 1,

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# Regulations

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2006. The effective date of this revision is November 15, 2009.

Federal Terms and State Equivalents: When the regulations, as set forth in the clarifications and correcting amendments to the final rule for the General Industry Standards, 29 CFR Part 1910, and Shipyard Employment Standards, 29 CFR Part 1915, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
April 3, 2006	September 1, 2006
April 3, 2006	November 15, 2009

VA.R. Doc. No. R10-2145; Filed September 15, 2009, 10:33 a.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF FUNERAL DIRECTORS AND EMBALMERS

#### Final Regulation

**REGISTRAR'S NOTICE:** The Board of Funeral Directors and Embalmers is claiming an exemption from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act pursuant to § 2.2-4007.2 of the Code of Virginia. Section 2.2-4007.2 provides that if an agency chooses to amend a regulation to provide the alternative of submitting required documents or payments by electronic means, such action shall be exempt from the operation of Article 2 provided the amended regulation is (i) adopted by December 31, 2010, and (ii) consistent with federal and state law and regulations.

Titles of Regulations: **18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers (amending 18VAC65-20-130, 18VAC65-20-140, 18VAC65-20-240).**

**18VAC65-40. Regulations for the Funeral Service Internship Program (amending 18VAC65-40-110, 18VAC65-40-180).**

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

Effective Date: November 11, 2009.

Agency Contact: Lisa Russell Hahn, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone

(804) 367-4424, FAX (804) 527-4637, or email [lisa.hahn@dhp.virginia.gov](mailto:lisa.hahn@dhp.virginia.gov).

#### Summary:

*The amendments facilitate electronic submissions of applications and renewals. References to a contracting agent are deleted since all applications now come directly to the board and requirements for all documents to be submitted in one package are eliminated to allow the application to be submitted electronically by the applicants and other documents (licensure verification, transcripts, exam scores, etc.) to be sent directly from the source. All references to a renewal application are amended to use the term renewal form, since renewal of a license or certificate can now be accomplished online by completion of an electronic form and submission of a fee.*

#### **18VAC65-20-130. Renewal of license; registration.**

A. A person, establishment, crematory, courtesy card holder or surface transportation and removal service that desires to renew its license or registration for the next year shall, not later than the expiration date as provided in 18VAC65-20-120, submit the renewal application form and applicable fee.

1. In order to renew an active funeral service, director or embalmer license, a licensee shall be required to comply with continuing competency requirements set forth in 18VAC65-20-151.

2. The board shall not renew a license for any licensee who fails to attest to compliance with continuing competency requirements on the renewal form.

B. A person who or entity that desires to renew an expired license for up to one year following expiration shall comply with requirements of subsection A of this section and also submit the applicable fee for late renewal.

C. A person who or entity which fails to renew a license, registration, or courtesy card by the expiration dates prescribed in 18VAC65-20-120 shall be deemed to have an invalid license, registration, or courtesy card and continued practice may subject the licensee to disciplinary action by the board.

#### **18VAC65-20-140. Reinstatement of expired license or registration.**

A. The board may consider reinstatement of an expired license or registration that has not been renewed within one year of expiration for up to three years following expiration. ~~A written~~ An application request for reinstatement shall be submitted to the board and shall include payment of the reinstatement fee prescribed in 18VAC65-20-70.

B. If the Virginia license of a funeral service provider, funeral director and embalmer is lapsed three years or less and the applicant is seeking reinstatement, he shall provide evidence of having completing the number of continuing

competency hours required for the period in which the license has been lapsed.

C. When a license is not reinstated within three years of its expiration date, an applicant shall reapply for licensure and pass the state examination.

**18VAC65-20-240. Requirements for funeral service licensure by examination.**

A. Application requirements.

1. ~~With the exception of~~ Applicants shall submit school transcripts and national examination board scores, ~~all parts as part~~ as part of an application package, including the required fee and any additional documentation as may be required to determine eligibility, ~~shall be submitted simultaneously.~~

2. An individual applying for the state examination shall submit the application package not less than 30 days prior to an examination date. The board may, for good cause shown by the applicant, waive the time for the filing of any application.

B. National examination requirements. Prior to applying for licensure by examination, every applicant shall pass the National Board Examination of the Conference of Funeral Service Examining Boards of the United States, Inc., administered in accredited schools of embalming or mortuary science.

C. State examination requirements. All applicants shall pass the Virginia State Board Examination.

**18VAC65-40-110. Reinstatement of expired registration.**

A. A funeral service intern whose registration has expired may be reinstated within one year following expiration by payment of the current renewal fee and the late renewal fee.

B. A funeral service intern whose registration has been expired for more than one year shall apply for reinstatement by submission of ~~a written~~ an application and payment of a reinstatement fee. The board may consider reinstatement of an expired registration for up to three years following expiration.

C. When a registration is not reinstated within three years of its expiration date, a new application for registration shall be filed and a new internship begun.

**18VAC65-40-180. Intern application package.**

A. Any person who meets the qualifications of § 54.1-2817 of the Code of Virginia may seek registration with the board as a funeral service intern by submission of an application package, which shall include documentation of the qualifications and signatures of any supervising licensees.

B. ~~With the exception of~~ Applicants shall submit school transcripts, ~~all parts as part~~ as part of an application package, including the required fee and any additional documentation

as may be required to determine eligibility, ~~shall be submitted simultaneously.~~

VA.R. Doc. No. R10-2119; Filed September 23, 2009, 9:40 a.m.

**Final Regulation**

**REGISTRAR'S NOTICE:** The Board of Funeral Directors and Embalmers is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Board of Funeral Directors and Embalmers will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 18VAC65-30. Regulations for Preeed Funeral Planning (amending 18VAC65-30-220, 18VAC65-30-230).

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

**Effective Date:** November 11, 2009.

**Agency Contact:** Lisa Russell Hahn, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4424, FAX (804) 527-4637, or email [lisa.hahn@dhp.virginia.gov](mailto:lisa.hahn@dhp.virginia.gov).

**Summary:**

*When the Department of Health Professions moved its offices in August of 2007, 18VAC65-30-220 and 18VAC65-30-230 were not amended to reflect the new address, and telephone and fax numbers of the department. These amendments reflect those changes.*

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# Regulations

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Part VIII  
Required Content of Contracts and Disclosures

**18VAC65-30-220. Content of preneed contracts.**

The following information shall be contained in any contract for preneed funeral planning.

Date: \_\_\_\_\_

Contract: \_\_\_\_\_

PRENEED FUNERAL CONTRACT

for

(Name of Recipient of Services)

\_\_\_\_\_  
(Zip) \_\_\_\_\_

**I. SUPPLIES AND SERVICES PURCHASED**

If the prices of goods and services are guaranteed, no additional cost will incur for your family or estate even though the actual prices of goods and services may increase between the date of this contract and the time of need. (Please see the disclosure document.)

Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use an item, we will explain the reasons in writing below. If you selected a funeral that may require embalming, such as a funeral with a viewing, you may have to pay for embalming. You do not have to pay for embalming you did not select if you select arrangements such as a direct cremation or immediate burial.

Guaranteed Services Purchased	
I. BASIC SERVICES OF FUNERAL DIRECTOR AND STAFF	\$ _____
II. FUNERAL HOME FACILITIES	
A. Facilities and Staff for visitation/viewing	\$ _____
B. Facilities and Staff for funeral ceremony	\$ _____
C. Facilities and Staff for memorial service	\$ _____
D. Equipment and Staff for graveside service	\$ _____
(NOTE TO FUNERAL HOME: If you have additional charges such as facilities and staff for home/church viewing, or a charge for additional staff person or through calculation of manhours, etc., add here as extra items. If you have a charge for equipment for interment, add here.)	
III. EMBALMING	
A. Normal remains	\$ _____
B. Autopsy remains	\$ _____
IV. OTHER PREPARATION OF THE BODY	\$ _____
(NOTE: List all items that you placed under Other Preparation on your General Price List.)	
V. IMMEDIATE BURIAL	\$ _____
VI. DIRECT CREMATION	\$ _____
VII. TRANSFER OF REMAINS TO FUNERAL ESTABLISHMENT	\$ _____
VIII. FORWARDING REMAINS TO ANOTHER FUNERAL HOME	\$ _____

IX. RECEIVING REMAINS FROM ANOTHER FUNERAL HOME	\$ _____
X. AUTOMOTIVE EQUIPMENT	
A. Hearse	\$ _____
B. Limousine	\$ _____
(NOTE: List all others that you placed on General Price List.)	
XI. FUNERAL MERCHANDISE	
A. Casket (*describe)	
_____	
_____	\$ _____
B. Outer Burial Container (*describe)	
_____	
_____	\$ _____
C. List any others	
_____	\$ _____
Supplies Purchased	
Clothing	\$ _____
Temporary marker	\$ _____
Acknowledgment cards	\$ _____
Register/attendance books	\$ _____
Memorial folders	\$ _____
Other	\$ _____
SUBTOTAL COSTS OF (GUARANTEED) SUPPLIES PURCHASED:	\$ _____
XII. PACKAGE PRICES	
(NOTE: List all package prices by name.)	
SUBTOTAL COSTS OF (GUARANTEED) SUPPLIES PURCHASED:	\$ _____
Nonguaranteed Goods and Services Purchased	
<p>The actual prices of goods and services below are NOT GUARANTEED. These items may include, but not be limited to, obituary notices, death certificates, cemetery fees, flowers, sales tax, etc. The prices are estimated and the estimates will be included in the Grand Total Contract Price. The differences between the estimated prices below and the actual cost will be settled with your family or estate at the time of need:</p>	
SUBTOTAL ESTIMATED COSTS OF NONGUARANTEED ITEMS:	\$ _____
GRAND TOTAL FOR PRENEED ARRANGEMENTS	
1. Total cost of (guaranteed) services purchased	\$ _____
2. Total cost of (guaranteed) supplies purchased	\$ _____
3. Total estimated cost of nonguaranteed items	\$ _____



# Regulations

GRAND TOTAL	\$ _____
The only warranties, express or implied, granted in connection with the goods sold in this preneed funeral contract, are the express written warranties, if any, extended by the manufacturers thereof. No other warranties and no warranties of MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE are extended by the (funeral home) _____.	
II. GENERAL INFORMATION	
In order that the Buyer may understand the relationship of all parties involved in this preneed arrangement and contract, the following is provided:	
A. Buyer:	
B. Funeral Home Providing Services:	
C. Contract seller:	
Employed by: (Funeral Home)	
Virginia Funeral Director License Number:	

## Method of Funding

- A. Insurance
- B. Trust
  - 1. Amount to be trusted:
  - 2. Name of trustee:
  - 3. Disposition of Interest:
  - 4. Fees, expenses, taxes deducted from earned interest:
  - 5. Buyer's responsibility for taxes owned on interest:

The following information will be given if an insurance policy or annuity contract is used to fund this agreement:

- A. Buyer:
- B. Insurance Company:
  - Employed by: (Insurance Company)
  - Licensed Funeral Director in Virginia: \_\_\_yes \_\_\_no
  - Funeral Director License Number (If Applicable):
  - Employed by Funeral Home (If Applicable):
- D. The life insurance or annuity contract provides either that:
  - \_\_\_\_\_ The face value thereof shall be adjusted annually by a factor equal to the Consumer Price Index as published by the Office of Management and Budget of the United States; or
  - \_\_\_\_\_ A benefit payable at death under such contract that will be equal or exceed the sum of all premiums paid for such contract plus thereon at the annual rate of at least 5.0%, compounded annually.

## III. CONSUMER INFORMATION

The Board of Funeral Directors and Embalmers is authorized by Chapter 28 (§ 54.1-2800 et seq.) of Title 54.1 of the Code of Virginia to regulate the practice of preneed funeral planning. Consumer complaints should be directed to:

The Board of Funeral Directors and Embalmers  
~~6606 West Broad Street, 4th Floor~~ 9960 Mayland Drive, Suite 300  
Richmond, Virginia ~~23230-1717~~ 23233  
Telephone Number ~~804-662-9907~~ (804) 367-4479  
Toll Free Number 1-800-533-1560  
FAX: (804) 527-4413

## IV. DISCLOSURES

The disclosure statements will be available for your review. The General Price List shall be furnished to you by the contract seller. These contain information that you must receive by law and/or the authority of the Board of Funeral Directors and Embalmers. You are entitled to receive all information in clear and simple language including the language of the funding agreement for this preneed arrangement.

If any law, cemetery, or crematory requires the purchase of any of those items listed in Part I, the requirements will be explained in writing.

By signing this contract, buyer acknowledges availability of and opportunity to read a copy of all of the required documents.

## V. TERMINATION OF CONTRACT

This person who funds this contract through a trust agreement may terminate this preneed contract at any time prior to the furnishing of the services or supplies contracted for:

Within 30 days

If you terminate this preneed contract within 30 days of the date of this contract, you will be refunded all payments of whatever type you have made, plus any interest or income you may have earned.

More than 30 days

If you terminate this preneed contract more than 30 days after the date on this contract, you will be refunded whatever amount was required to be placed in a revocable trust fund, plus any interest or income it has earned.

Any person who funds this contract through a trust fund which is irrevocable or through an insurance/annuity policy or through the transfer of real estate/personal property may not be eligible for a refund.

VI. STATEMENT OF GUARANTEE

By signing this contract, (Funeral Home) \_\_\_\_\_ agrees to the statement checked below (check one):

\_\_\_\_\_ Prefinancing guarantees that no additional payment will be required from the family or estate for guaranteed services and supplies provided the Grand Total of these arrangements is paid in full and the interest is allowed to accumulate in your account (see page \_\_\_\_\_ for Grand Total amount). Payment of the difference will be required for the nonguaranteed estimated items if they increase in price.

\_\_\_\_\_ The prices for items under supplies and services are not guaranteed.

VII. AGREEMENT

In witness whereof, the Buyer and the Funeral Home have executed this contract, intending its terms to be in accordance with the Code of Virginia and any regulations implementing the Code. By signing this contract you acknowledge that you have been provided access to and the opportunity to read the Disclosure Statements.

\_\_\_\_\_  
(Designee of Funeral Home)

\_\_\_\_\_  
(Buyer)

\_\_\_\_\_  
(Funeral Home)

\_\_\_\_\_  
(Contract Date)

VIII. PENALTIES OR RESTRICTIONS

The (funeral home) \_\_\_\_\_, has the following penalties or restrictions on the provisions of this contract.

1. (Insert geographic restrictions);
2. (Insert an explanation of the Funeral Home's inability to perform the request(s) of the Buyer);

3. (Insert a description of any other circumstances which apply);

4. (Insert information that if particular goods and services specified in the contract are unavailable at the time of need):

A. The funeral home shall be required to furnish supplies and services similar in style and at least equal in quality of material and workmanship; and

B. The representative of the deceased shall have the right to choose the supplies or services to be substituted.

Addendum to Preneed Contract

APPOINTEE AGREEMENT

I appoint \_\_\_\_\_ of (address) \_\_\_\_\_ to assist with the preneed arrangements in my behalf. The relationship of my appointee to me is \_\_\_\_\_.

Contract Beneficiary: \_\_\_\_\_ Date: \_\_\_\_\_

I accept the request of (contract beneficiary) \_\_\_\_\_ to assist with his/her preneed arrangements.

Appointee: \_\_\_\_\_ Date: \_\_\_\_\_

The foregoing was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

Notary: \_\_\_\_\_

Date Commission Expires: \_\_\_\_\_

**18VAC65-30-230. Content of disclosure statements.**

The following disclosure statements shall be provided as a part of any contract used for preneed funeral planning:

We are required by law and/or the Virginia Board of Funeral Directors and Embalmers to provide access to and the opportunity for you to read the following information to assist you in preplanning. A question and answer format is used for clarity and includes the most commonly asked questions.

PRENEED CONTRACTS

-- Is there more than one type of preneed agreement?

Yes. Guaranteed contracts mean that the costs of certain individual items or the cost of the total package will never be more to your family or estate. Nonguaranteed means just the opposite. (See the section entitled "General Funding Information" for more information on guaranteed and nonguaranteed costs.)

Contracts may be funded by insurance/annuity policies, trusts, or transfer of real estate/personal property.

-- What are my protections?

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# Regulations

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You should take your completed preneed contract home before you sign it and review it with your family or your legal advisor. You have a right to this review before you sign the contract or pay any money.

You should also read carefully the information in this disclosure statement. If you have any questions, contact the seller for more information or contact your legal advisor.

## CANCELLATION

-- Can I cancel my preneed agreement if I change my mind? Will I get my money back?

You may cancel payment for supplies or services within 30 days after signing the agreement. If you funded your preneed arrangement through a trust, the contract seller will refund all the money you have paid plus any interest or income you have earned.

If you funded your preneed arrangement through a revocable trust and you cancel the preneed contract AFTER the 30-day deadline, you will be refunded all of your money on the items that are not guaranteed and 90% of all your money on the items that are guaranteed. You will also receive any interest or income on that amount. A revocable trust is a trust that you can cancel.

There may be a penalty to withdraw money from a revocable trust account which has already been established in your name. If there is, your contract will give you this information. (See the first question under the section entitled "Payment" below.)

If you have funded your preneed arrangement through an irrevocable trust you will not be able to cancel the trust agreement or receive a refund. An irrevocable trust is one that cannot be cancelled.

If you funded your preneed arrangement through an insurance policy/annuity contract which will be used at the time of your death to purchase the supplies and services you have selected, you will need to pay careful attention to the cancellation terms and conditions of the policy. You may not be eligible for a refund.

## PAYMENT

-- What happens to my money after the contract is signed?

Your money will be handled in one of several ways. It may be deposited in a separate trust account in your name. The trust account will list a trustee who will be responsible for handling your account. The funeral home you have selected as your beneficiary will also be listed. You have the right to change the funeral home and the trustee of your account prior to receiving the supplies and services under the preneed contract.

Your money may be used to purchase a preneed life insurance policy which may be used to pay for your

arrangements upon your death. The proceeds of the policy will be assigned to the funeral home of your choice. You may change the funeral home assignment at any time prior to receiving the supplies and services under the preneed contract.

You may decide to choose a life insurance policy or a trust account that requires regular premium payments and not have to make an up-front, lump sum payment.

-- May I pay for goods and services with real estate or personal property?

Yes. When you pay for these supplies and services in whole or in part with any real estate you may own, the preneed contract that you sign will be attached to the deed on the real estate and the deed will be recorded in the clerk's office of the circuit court in the city or county where the real estate is located.

If you pay for goods and services with personal property other than cash or real estate, the contract seller, will declare in writing that the property will be placed in a trust until the time of your death and will give you written information on all the terms, conditions, and considerations surrounding the trust. The contract seller will confirm in writing that he has received property.

You may decide not to transfer the title of the personal property to the contract seller of your preneed contract. In this situation, you will have to submit information to the contract seller in writing that you are giving him the property without a title, and describe the property and where it will be kept until the time of your death.

In either case, the written statements will be recorded in the clerk's office of the circuit court of the city or county in which you live. The written statement does not have to be a separate document.

## GENERAL FUNDING INFORMATION

-- If the prices of the goods and services are affected by inflation between now and my death, will the funding I choose be adjusted accordingly?

There is a possibility that the funding may fail to keep up with inflation. This could mean that the funding you choose could have insufficient value to cover all expenses.

-- What happens if my funding is not enough to cover the full cost of these arrangements?

If the entire funeral or specific items in the agreement are guaranteed by the contract seller, your family or estate will not have to pay any more for those items provided that you have paid the grand total in full and all interest earned is allowed to accumulate in your account. However, if you have not paid the account in full and have not allowed the interest to accumulate in the account and any items increase in price, your family or estate would be

responsible for the extra amount if the funds are not sufficient. In some situations where you pay toward your funding with regular premiums rather than in one lump sum, your account may not be enough at the time of your death to cover everything.

-- What happens to the extra money if my funding is more than what is needed to pay for these arrangements?

Sometimes, as explained in the answer above, your funding account may not have had the time to grow sufficiently before your death to cover items which are guaranteed in price to you, yet have increased in price for the funeral home.

After funeral expenses are paid, there may be money left over. Because of the ongoing risk that a funeral home takes in guaranteeing prices for you, the funeral home may not be required to return this excess money.

Some funding agreements and funeral homes, however, require that extra money be returned to the estate or family. Others do not. You should obtain information concerning this in writing before signing the preneed contract.

The answers to the following questions will depend upon the terms and conditions of the individual's funding and preneed agreements.

Please review your preneed contract and/or funding agreement for answers to these questions.

-- What happens to my preneed contract if I change my assignment from one funeral home to another?

(Funeral home shall place answer here)

-- What happens to my preneed contract if I change the beneficiary of my funding or the use of my proceeds from the funding.

If you make such changes, it could void your contract. You should request specific information from the contract seller and the funding arrangement.

-- What will happen to my preneed contract if I fail to make agreed to premium payments to my funding source?

(Funeral home shall place answer here)

-- Do I get any money back if I surrender or cancel my funding arrangements?

(Funeral home shall place answer here)

## TRUST ACCOUNT

-- If my money goes into a trust account, what information will I receive about that account?

If you want your money to go into a trust fund, the trust agreement must furnish you with information about the amount to be deposited into the account, the name of the trustee, information about what happens to the interest

your trust account will earn, and information about your responsibility to file and pay taxes on that interest.

If there are filing expenses connected with your trust account, you will be notified what the expenses are and whether you or the contract seller is the responsible party for paying those.

-- What happens to the interest earned by the trust?

The interest earned by the trust may be handled in different ways by different trust arrangements. The interest may have to go back into your account if items on your contract are guaranteed. You may be responsible for reporting that interest to the Internal Revenue Service and paying taxes on it. You will be responsible to pay any taxes on the interest earned even if you cancel your trust account.

Some trust accounts cannot be cancelled.

There may be special fees deducted from your interest. However, you may still be responsible for paying taxes on the entire amount of interest earned before the fees were deducted. Please ask your contract seller for a written list of any fees so you will have a clear understanding about them before you sign the contract.

-- If I pay my trust in premium payments, what happens if I die before the grand total of the funeral has been placed in trust?

(Funeral home shall place answer here)

## CLAIMS AGAINST THIS CONTRACT

-- Can someone to whom I owe money make a claim against the money, personal property, or real estate that I have used to pay for this contract?

No. This money or property cannot be used to settle a debt, a bankruptcy, or resolve a claim. These funds cannot be garnished.

-- Can the money or property be taxed?

No. Currently, interest earned on the money you deposit in a trust, savings account, or the value of the property you used for payment can be taxed but not the original amount which you invested. Interest earned on annuities is generally deferred until withdrawal.

## GENERAL GOODS AND SERVICES

-- If I choose goods and services that might not be available at the time of my death, what is the provider required to do?

The funeral home which you select is required to furnish supplies and services that are similar in style and equal in value and quality if what you choose is no longer made or is not available at the time of your death.

Your representative or next-of-kin will have the right to choose the supplies or services to be substituted. However,

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## Regulations

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if the substitute is more expensive than the item originally selected by you, your designee or next-of-kin would be responsible for paying the difference. Under no circumstances will the funeral establishment be allowed to substitute lesser goods and services than the ones you chose.

If, before your death, the funeral home goes out of business or is otherwise unable to fulfill its obligation to you under the preneed contract, you have the right to use the proceeds at the funeral home of your choice.

If the inability to provide services does not become apparent until the time of your death, the individual that you named as your designee could use the funds for services at another funeral home.

-- May I choose the exact item I want now and have the funeral home store it until my death?

If the funeral home or supplier has a storage policy you may ask for this service. If the funeral home or contract seller agrees to store these items, the risk of loss or damage shall be upon the funeral home during the storage period.

For example, what would happen if you select a casket which is in-stock at the time you make these arrangements and the funeral home or supplier agrees to store it for you in their warehouse and: (i) damage occurs, (ii) the funeral home or supplier goes out of business, (iii) the funeral home or supplier is sold, etc.? You need to be assured in writing of protection in these types of situations.

-- What happens if I choose to have a unique service that is not customary or routine in my community? Must the funeral home comply with my wishes?

The funeral home which you have chosen to conduct your service may be able to only provide certain types of services. They may not be able to fulfill your request. If there is a restriction on what they can provide, you will be notified in writing before you sign the preneed contract.

If the funeral home agrees in writing before you sign the contract to perform such services, the funeral home shall provide you a written, itemized statement of fees which you will be charged.

-- Will the funeral home agree to transport my body to another area for burial?

Again, the funeral home may have restrictions on the distance they are willing to travel to conduct a burial. If restrictions apply, you will be notified in writing.

If the funeral home agrees in writing before you sign the contract to honor your wishes, the funeral home shall provide you a written, itemized statement of any penalties (fees) which you will be charged.

-- I may die and be buried in a city other than one where the funeral home that I select for my goods and services is located. Will the funeral home that I select under this contract deliver my merchandise to the city where I die and am to be buried?

This is entirely up to the funeral home to decide. If the funeral home has restrictions on this, they will notify you in writing. If they agree to ship merchandise to another area for your funeral, you will be notified before signing this contract of the fees involved if they can be determined and guaranteed at this time.

However, the preneed contract arrangements and funding is considered portable. This means that they are available for transfer from one locality to another. It is unusual for actual goods and merchandise to be transferred.

### PRICING

-- How will I know that the prices of items which I select are the same for everyone?

The funeral home maintains a general price list and a casket and outer burial container price list. Your contract seller will give this to you before you begin talking about arrangements. After your discussion is finished, you will be given a copy of your preneed contract on which charges will be listed. Charges will only be made for the items you select. If there are any legal or other requirements that mandate that you must buy any items you did not specifically ask for, the contract seller will explain the reason for the charges to you in writing.

You may ask a funeral home to purchase certain items or make special arrangements for you. If the funeral home charges you for these services, you will receive an explanation in writing. The charges to you for these services may be higher than if you or your family purchased them directly.

At the time of your death, your family or estate will be given an itemized statement which will list all of the specific charges. This is a requirement of the Federal Trade Commission. Although not required to do so, some funeral homes may also choose to give you an itemized statement when you make these arrangements.

-- What is meant by guaranteed and nonguaranteed prices?

Some contract sellers may agree that certain prices are guaranteed. Some may guarantee the price of the total package. Other funeral homes may not guarantee any prices.

Guaranteed prices are those that will not increase for your family or estate at the time of your death. Basically, this means that your funeral arrangement for those items will be covered by and will not exceed your funding and the interest it earns. Nonguaranteed prices are those which

might increase or decrease. The nonguaranteed prices may be written in at the time of this contract with you understanding that the price is an estimate only and may increase or decrease. A settlement to that effect may have to be made with your family or representative after your death.

-- Can the contract seller and I negotiate a projected charge for the nonguaranteed items based on the rate of inflation?

It is entirely up to the contract seller to inform you of the funeral home policy in that regard.

#### CASKETS AND CONTAINERS

-- Do I have to buy a vault or a container to surround the casket in the grave?

In most areas of the country, state and local laws do not require that you buy a container to surround the casket in the grave. However, many cemeteries ask that you have such a container to support the earth above the grave. Either a burial vault or a grave liner will satisfy if such requirements exist.

-- Is a casket required?

A casket is not required for direct cremation. If you want to arrange a direct cremation, you may use an unfinished wood box or an alternative container made of heavy cardboard or composition materials. You may choose a canvas pouch.

-- Do certain cemeteries and crematoriums have special requirements?

Particular cemeteries and crematoriums may have policies requiring that certain goods and services be purchased. If you decide not to purchase goods and services required by a particular cemetery or crematorium, you have the right to select another location that has no such policy.

#### EMBALMING

-- Is embalming always required?

Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements such as viewing or visitation with an open casket. You do not have to pay for embalming you did not approve if you select arrangements such as a direct cremation or immediate burial. If the funeral home must charge to conduct an embalming, your designee will be notified of the reasons in writing.

#### ASSISTANCE

-- This is all very confusing to me. May I pick someone close to me to help with all of this? May this person also work with the funeral home to ensure that my wishes as written in the preneed contract are carried out?

You may designate in writing a person of your choice to work with the funeral home and contract seller either before or after your death to ensure that your wishes are fulfilled. You must sign the statement and have it notarized. The person that you designate must agree to this in writing. Under the laws governing preneed contracts, the individual whom you designate has final authority at the time of your death.

-- Where can I complain if I have a problem concerning my preneed contract, the contract seller, or the funeral home?

You may direct your complaints or concerns to:

The Board of Funeral Directors and Embalmers  
~~Department of Health Professions~~  
~~6606 West Broad Street, 4th Floor~~ 9960 Mayland Drive,  
Suite 300

Richmond, Virginia ~~23230~~ 1717 23233

Telephone Number ~~(804) 662-9907~~ (804) 367-4479

Toll Free Number 1-800-533-1560

Fax: ~~(804) 662-9943~~ (804) 527-4413

VA.R. Doc. No. R10-2101; Filed September 23, 2009, 9:40 a.m.

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## TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

### STATE CORPORATION COMMISSION

#### Final Regulation

<p><b>REGISTRAR'S NOTICE:</b> The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.</p>
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Titles of Regulations: **20VAC5-427. Rules for Local Exchange Telecommunications Company Service Quality Standards (repealing 20VAC5-427-10 through 20VAC5-427-170).**

**20VAC5-428. Rules Governing Local Exchange Telecommunications Carrier Retail Service Quality (adding 20VAC5-428-10 through 20VAC5-428-130).**

Statutory Authority: §§ 12.1-13, 56-35, 56-36, 56-234, 56-234.4, 56-246, and 56-479 of the Code of Virginia.

Effective Date: November 1, 2009.

Agency Contact: Steven Bradley, Deputy Director, Public Utility Commission, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9674, FAX (804) 371-9069, or email [steven.bradley@scc.virginia.gov](mailto:steven.bradley@scc.virginia.gov).

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# Regulations

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## Summary:

*The regulations apply to all certificated local exchange carriers and prescribe a minimum acceptable level of quality of service under normal operating conditions. They also set forth enforcement and sanction processes to address any concern for inadequate service. The final regulations require companies to report service outages in the same manner as required by the Federal Communications Commission, rather than using the previous criteria. Quarterly performance reports from large companies are no longer required, except for a company subject to a commission investigation that directs that company to file specified service quality performance reports. The monthly performance standards include (i) a new requirement to restore service within 24 hours when a customer reports a medical necessity; (ii) restoring no less than 80% of all out-of-service troubles within 48 hours, instead of the previous 24-hour standard; (iii) answering calls to repair centers within an average of 60 seconds, rather than requiring all customer calls to be answered within that average; and (iv) meeting no less than 90% of repair and installation commitments, which includes those commitments that do not require a field dispatch. The regulation contains a sunset provision allowing the regulation to expire on December 31, 2012, if the commission has conducted a proceeding that determines that service regulations are no longer necessary to ensure reasonably adequate service.*

AT RICHMOND, SEPTEMBER 11, 2009

COMMONWEALTH OF VIRGINIA, ex. rel.

STATE CORPORATION COMMISSION

CASE NO. PUC-2008-00047

Ex Parte: Revision of Rules for  
Local Exchange Telecommunications  
Company Service Quality Standards

### ORDER ADOPTING RULES

On June 17, 2008, the State Corporation Commission ("Commission") issued an Order Prescribing Notice, Scheduling Hearing, and Inviting Comments ("Order Prescribing Notice") that established this proceeding for the purpose of: (1) repealing the current Rules for Local Exchange Telecommunications Company Service Quality Standards, 20 VAC 5-427-10 et seq.; and (2) considering the adoption of new Rules Governing Local Exchange Telecommunications Carrier Retail Service Quality ("Proposed Rules"), 20 VAC 5-428-10 et seq. The Commission provided for publication of the Proposed Rules, permitted interested persons to submit written and electronic comments thereon, directed the Commission's Staff ("Staff") to file a response to such comments, and scheduled a public hearing for September 25, 2008.

On September 15, 2008, the Staff filed a response to the written and electronic comments submitted in this proceeding. As part of such response, the Staff provided a summary of each comment and noted that comments were received from the following: Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"); Communications Workers of America ("CWA"); Utility Professional Services, Inc. ("Utility Pros"); Nancy Anderson; Ellen Boone; Alexander Chinoy; Vincent Cody; Curtis Darlington; M. Timothy Firebaugh; Arthur Garrison; Patrick Geraghty; Richard Hampton; Joyce Hann; Peter Hudik; James R. Jones; Elizabeth Piasecki; Gerald T. Yost; John T. O'Mara; Cox Virginia Telcom ("Cox"); Virginia Cable Telecommunications Association ("VCTA"); AT&T Communications of Virginia and TCG Virginia (collectively, "AT&T"); Cavalier Telephone ("Cavalier") and XO Virginia; Central Telephone Company and United Telephone Southeast (collectively, "Embarq"); NTELOS Telephone Company, Roanoke and Botetourt Telephone, NTELOS Network, and R&B Network (collectively, "NTELOS"); Virginia Telecommunications Industry Association ("VTIA"); Verizon Virginia Inc., Verizon South Inc., and MCImetro Access Transmission Services of Virginia, Inc. (collectively, "Verizon"); and PAETEC Communications and US LEC Corp.

On September 25, 2008, the Commission held a public hearing at which it received comments from persons on behalf of the following: Utility Pros; Embarq; VCTA; Cavalier; Cox; VTIA; Verizon; MGW Telephone Company; Shenandoah Telecommunications Company; and the Staff. The Commission considered all the comments received and revised the Proposed Rules ("Revised Proposed Rules"). By Second Order for Notice and Hearing ("Second Order") entered December 15, 2008, the Commission published and sought comments upon the Revised Proposed Rules, which were attached to the Second Order. In addition, a public hearing for oral comments regarding the Revised Proposed Rules was scheduled for March 10, 2009.

Pursuant to an amended motion filed by the VTIA on January 5, 2009, and responses thereto, the comment deadline and public hearing were rescheduled. On January 15, 2009, the Commission entered its Order Granting Motion for Extension that allowed comments to be submitted on or before March 13, 2009, and continued the public hearing from March 10, 2009, to April 2, 2009.

Comments were submitted by Battinto Batts; William Beckner; Tainer Whitehurst; Jennifer Jones; Daniel Casey; Donnie Tate; Nicholas Beltrante, Esquire; Tracy Garrett; Nancy Sykes; Chris Barnert; Jennifer Lantrip; Joan Quinn; Adel Farag; Julie Kelly; Utility Pros; VTIA; Consumer Counsel; Cox; Verizon; AT&T; Embarq; VCTA; CWA; and Urchie Ellis; and the Staff Report was filed March 27, 2009. The public hearing was conducted on April 2, 2009, and comments were received on behalf of the following: Utility

Pros; CWA; Embarq; VCTA; Cox; VTIA; Verizon; and the Staff. At the conclusion of the hearing, the Commission authorized Verizon to submit the written comments of John L. Barnes and asked the participants to submit any post-hearing briefs on or before May 14, 2009.

On May 8, 2009, the Staff filed its Motion to Defer Post-Hearing Briefs ("Staff Motion"), stating that the Staff and Verizon had assembled a modified version of the Revised Proposed Rules that satisfied the concerns of both the Staff and Verizon. The Staff Motion asserted that the modified version of the Revised Proposed Rules (Appendix A attached to the Staff Motion) (hereinafter, "Suggested Modifications") might also satisfy the other participants if they were afforded an opportunity to review and evaluate it.

By Order entered May 11, 2009, the Commission granted the Staff Motion and advised the participants that a subsequent order would schedule further pleadings. By Order entered May 29, 2009, the Commission directed that post-hearing briefs addressing the Suggested Modifications be filed on or before June 15, 2009. Such briefs were received from Utility Pros; VTIA; Verizon; Cox; Consumer Counsel; CWA; Embarq; AT&T; and the Staff. Only the CWA opposed the Commission's adoption of the modified version of the rules attached to the Staff Motion.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows.

We find that the rules adopted herein, which incorporate most of the Suggested Modifications, establish minimum standards for protecting public health, safety, and economic vitality while allowing competition to offer customers choices above and beyond these minimum standards.<sup>1</sup> We do not adopt the Suggested Modifications verbatim because we conclude that specific revisions and clarifications are required.

First, we find that the Sunset Provision of Rule 130 should be rephrased to make it optional for the Commission to conduct a proceeding that might determine whether the rules are no longer necessary to ensure adequate service.

We also find that certain additions and modifications should be made to the definitions included in Rule 10. Specifically, we conclude that the term "rolling 30-day average," which can result in daily fines, needs to be added to the rules' definition provisions. Hence the following definition shall be added to 20 VAC 5-428-10 B: "Rolling 30-day average" means a determination of average compliance with the metrics set out in 20 VAC 5-428-90 B.2-B.8 during the 30 days that precede the date or dates specified by the commission pursuant to 20 VAC 5-428-110 B." In addition, we modify, and thereby clarify, the proposed definition of "Network access line" to mean a "voice-grade customer dial tone line." Furthermore, we find that the proposed definitions

of "Central office service area" and "Major service outage" are unnecessary and, therefore, should be eliminated.

Moreover, we find that the definition of "Minimum acceptable level of service quality under normal operating conditions" should be clarified by adding at its end the phrase "as required by Va. Code §§ 56-234 and 56-247." We find that these Code sections require, for example, that every customer whose service is interrupted shall have service restored with no unnecessary delay. Further, all persons or businesses desiring to initiate service from a carrier should expect to receive a requested service within a reasonable period. These requirements recognize the vital importance to personal and public safety, as well as to the expectations of modern commerce, that reliable communications networks and services provide.

There has also been concern about the measurement of two of the metrics of 20 VAC 5-428-90. Both Rule 90 B.2 and Rule 90 B.4 require the completion of a certain proportion of out-of-service trouble reports and installation of service orders, respectively. To assure consistent calculation of these two metrics, the denominator of the out-of-service restorations shall be the "number of out-of-service trouble reports restored in the given month" and the denominator for installation of service orders shall be the "number of service orders completed in the given month." That replacement language shall be added to each rule.

We also recognize that the performance standards in Rule 90 B.2 and Rule 90 B.4 are largely dependent upon the quality and accuracy of criteria and information provided to customers by local exchange carriers ("LECs") with regard to the acceptance of or requests for extended intervals. In this regard, both such rules permit that, upon request from the Staff, a LEC shall provide certain criteria and information to - and which must be approved as satisfactory by - the Staff.

The proposed rule for routine network relocation and rearrangement has been eliminated. We omit it from the ongoing service standards because we conclude that a specific rule pertaining to network relocation and rearrangement may not be necessary. Nevertheless, we also conclude that Verizon's practices and procedures relative to network relocation and rearrangement should be investigated. Accordingly, we will soon initiate an investigation of Verizon's network relocation and rearrangement practices and procedures.

In order to enhance the effectiveness of the rule regarding Commission complaints, we shall adopt a requirement that LECs with 10,000 or more network access lines shall publish prominently on customers' bills every six months the information customers need in order to lodge a service-related complaint with the Commission. Such LECs shall obtain Staff approval of the form and content of this notice to customers. Any subsequent changes to that notice shall also be submitted to Staff for approval.



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We do not adopt the Suggested Modifications' revision of Rule 80 pertaining to directories. While we acknowledge that some customers may prefer to find listing information online or from a storage disk, rather than by consulting a printed directory, we also recognize that those customers without ready access to a computer still need access to the printed directory. Thus, Rule 80, as adopted today, continues to pertain to the publication and distribution of a printed directory. We note further that a LEC may seek a waiver or exception to Rule 80, as authorized by the terms of Rule 120, if it proposes not to publish and distribute a printed directory.

Finally, while we adopt the suggested modification to Rule 60 to incorporate federal requirements with respect to a wireline LEC's obligation to report service outages, we find it appropriate to reference all of Chapter 1, Subchapter A, Part 4 of Title 47 of the *Code of Federal Regulations*.

Accordingly, IT IS ORDERED THAT:

(1) We hereby adopt the revised Rules Governing Local Exchange Telecommunications Carrier Retail Service Quality (Chapter 428), appended hereto as Attachment A, to be effective on November 1, 2009.

(2) The Commission's Division of Information Resources shall forward this Final Order and the rules adopted herein to the Registrar of Virginia for publication in the *Virginia Register of Regulations*.

(3) This case is dismissed, and the papers filed herein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; all local exchange carriers certificated in Virginia as set out in Attachment B; and the Commission's Office of General Counsel and the Division of Communications.

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<sup>1</sup> Verizon and others initially contended that the service quality of landline networks should now be left to the marketplace, based upon the dramatic changes in the telecommunications industry over the past decade. This includes the significant loss of landlines to wireless and other competitors. We recognize the increased competition faced by landline networks, but as previously stated in this proceeding, *see* Second Order at 4, Virginia law currently requires this Commission to regulate the service quality of landline networks, and we find a current need for the regulation promulgated herein.

**CHAPTER 428**  
**RULES GOVERNING LOCAL EXCHANGE**  
**TELECOMMUNICATIONS CARRIER RETAIL SERVICE**  
**QUALITY**

**20VAC5-428-10. Applicability; definitions.**

A. This chapter is promulgated pursuant to §§ 56-35, 56-36, 56-234, 56-234.4, 56-246, 56-247, 56-249, and 56-479 of the

Code of Virginia and shall apply to local exchange carriers (LECs) providing local exchange telecommunications services within the Commonwealth of Virginia [ , except when a signed contract with a business customer provides otherwise ]. This chapter prescribes the minimum acceptable level of service quality under normal operating conditions. The commission may, after investigation and at its discretion, suspend application of this chapter during force majeure events, which include natural disaster, severe storm, flood, work stoppage, civil unrest, major transportation disruptions, or any other catastrophic events beyond the control of a LEC.

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

"Automated answering system" means a system where customer calls are received and directed to a live agent or an automated transaction system.

"Automated transaction system" means a system where customer transactions can be completed without the assistance of a live agent, and include the option to reach a live agent before the completion of an automated transaction.

"Central office" means a LEC-operated switching system, including remote switches and associated transmission equipment.

[ "Central office serving area" means the geographic area in which local service is provided by a LEC's central office and associated outside plant. ]

"Commission" means the Virginia State Corporation Commission.

"Customer" means any person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency that is an end user or the authorized agent of an end user of local exchange telecommunications services under the jurisdiction of the commission.

"Customer call center" means any functional entity that accepts customer calls pertaining to service orders, billing inquiries, repair, and any other related requests.

"Emergency" means a sudden or unexpected occurrence involving a clear and imminent danger demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.

"Local exchange carrier (LEC)" means a certificated provider of local exchange telecommunications services, excluding LECs subject to Chapter 16 (§ 56-485 et seq.) of Title 56 of the Code of Virginia.

"Local exchange telecommunications services" means local exchange telephone service as defined by § 56-1 of the Code of Virginia.

[ "Major service outage" means any network condition that causes 1,000 or more customers to be out of service for 30 or more minutes; causes an unplanned outage of, or completely isolates, a central office for 30 or more minutes; or disrupts 911 emergency call processing for any period.

"Minimum acceptable level of service quality under normal operating conditions" means the minimum level of service that shall be considered by the commission to be reasonably adequate as required by §§ 56-234 and 56-247 of the Code of Virginia. ]

"Network" means a system of central offices and associated outside plant.

"Network access line (NAL)" means a [ voice-grade ] customer dial tone line [ ~~or its equivalent~~ ] that provides access to the public telecommunications network.

"Out of service" means a network service condition causing an inability to complete an incoming or outgoing call or any other condition that causes a connected call to be incomprehensible.

"Outside plant" means the network facilities not included in the definition of central office including, but not limited to, copper cable, fiber optic cable, coaxial cable, terminals, pedestals, load coils, or any other equipment normally associated with interoffice, feeder, and distribution facilities up to and including the rate demarcation point.

"Rate demarcation point" means the point at which a LEC's network ends and a customer's wiring or facilities begin.

"Repeat report" means a customer reported trouble that is received by a LEC within 30 days of another trouble report on the same NAL.

[ "Rolling 30-day average" means a determination of average compliance with the metrics set out in 20VAC5-428-90 B 2 through B 8 during the 30 days that precede the date or dates specified by the commission pursuant to 20VAC5-428-110 B. ]

"Speed of answer interval (SAI)" means the period of time following the completion of direct dialing, or upon completion of a customer's final selection or response within an automated answering system, and lasting until the call is answered by a live agent or is abandoned by the customer or the LEC. In the case of automated transactions where a customer opts to speak to a live agent, the SAI is the period of time following the customer opting to speak to a live agent until the call is answered by a live agent or is abandoned by the customer or the LEC. A call is considered to have been answered when a live agent is ready to render assistance.

"Staff" means the commission's Division of Communications and associated personnel.

"Trouble" means an impairment of a LEC's network.

"Trouble report" means an initial oral or written notice, including voice mail and email, to any LEC employee or agent of a condition that affects or may affect network service.

## **20VAC5-428-20. Private property restoration.**

A LEC, whenever it disturbs private property during the course of construction or maintenance operations, shall, except when otherwise specified or governed by easement or agreement, make every reasonable effort to restore the private property to a condition that is at least as good as that which existed prior to the disturbance once all work is completed.

## **20VAC5-428-30. Availability and retention of records.**

A. A LEC shall provide to the commission or staff, upon request, all records, reports, and other information required to determine compliance with this chapter [ excluding reports relevant to 20VAC-5-428-90, which shall be provided pursuant to 20VAC5-428-90 A ] .

B. A LEC shall retain [ any routine business ] records relevant to this chapter for a minimum of two years.

C. A LEC shall retain customer billing records for a minimum of three years to permit the commission or staff to investigate and resolve billing complaints.

## **20VAC5-428-40. ~~Routine network relocation and rearrangement.~~ (Reserved.)**

~~Upon the receipt of a bona fide request for the routine relocation or rearrangement of its network facilities, a LEC shall provide the requesting party a detailed, itemized written good faith cost estimate, or a written work plan if no charges are applicable, within 45 days, unless otherwise agreed to by the requestor. Upon the requestor's acceptance of the cost estimate or work plan, a LEC shall complete the relocation or rearrangement work within 60 days, unless otherwise agreed to by the requestor.~~

## **20VAC5-428-50. [ ~~Trouble~~ Emergency trouble ] report [ ~~availability response~~ ].**

A. A LEC shall accept ~~and~~, acknowledge, and record trouble reports of an emergency nature at all times through automated or live means.

B. A LEC shall take immediate action to clear trouble reports of an emergency nature.

## **20VAC5-428-60. Service outage reporting.**

[ ~~A.~~ ] A LEC shall [ ~~advise~~ inform ] the staff of a [ ~~major~~ ] service outage [ ~~on the same day as the outage occurs. If the outage occurs outside of the commission's normal business hours, a LEC shall advise the staff~~ ] via voice mail and email [ ~~at the beginning of the next business day in Virginia by providing all reports required by the Federal Communications Commission (FCC) under 47 CFR Part 4. A LEC shall comply with all provisions of 47 CFR Part 4 related to report~~

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content, processing, and delivery. Upon request, a LEC shall provide to the commission or staff additional information regarding service outages not included in FCC reports as necessary to perform their oversight responsibility ].

[ ~~B. A LEC shall submit to the staff a major service outage report by the end of the next business day following the end of the outage and shall include the following information:~~

- ~~1. The central office, remote switch, or other network facility involved;~~
- ~~2. The date and estimated time of commencement of the outage;~~
- ~~3. The geographic area affected;~~
- ~~4. The estimated number of customers affected;~~
- ~~5. The types of services affected;~~
- ~~6. The duration of the outage (e.g., time elapsed from the commencement of the outage until estimated restoration of full service); and~~
- ~~7. The apparent or known cause or causes of the outage, including the name and type of equipment involved and the specific part of the network affected, and methods used to restore service. ]~~

## **20VAC5-428-70. Commission complaints.**

A. When the staff informs a LEC of an out-of-service commission complaint, that LEC shall restore the affected service within 24 hours of the report, [ subject to the customer-caused delay exclusion of 20VAC5-428-90 B 2, ] unless an extension is granted by the staff.

B. When the staff informs a LEC of a non-out-of-service commission complaint, the LEC shall resolve the complaint within 10 business days [ of the report ] , unless an extension is granted by the staff.

[ C. When the staff informs a LEC of an extended service installation complaint, that LEC shall provision service within five business days of the report, subject to the customer-caused delay, installation of more than five NALs, and telephone number porting exclusions of 20VAC5-428-90 B 4, unless an extension is granted by the staff. ]

## **20VAC5-428-80. Printed directories.**

A. A LEC shall publish [ ~~printed directories~~ ] or cause [ to be published ] its customers' listing information [ ~~to be published~~ ] in printed directories [ and shall distribute or cause to be distributed to its customers such directories ] at yearly intervals. [ The listing information of a LEC's customers shall be updated at least yearly, unless otherwise agreed to by the commission or staff. ]

B. A LEC responsible for publishing a directory shall make every reasonable effort to correct directory errors and to resolve directory disputes in a timely and efficient manner. A

LEC responsible for directory publication may be required by the commission to postpone publication depending upon the nature and severity of a complaint. A LEC responsible for publishing a directory includes, but is not limited to, a LEC that publishes directories, causes directories to be published, or provides customer information for inclusion in directories.

## **20VAC5-428-90. Network and customer care service quality and reporting.**

A. A LEC [ ~~with 10,000 or more NALs shall file quarterly performance reports showing monthly results on a statewide basis for the performance standards contained in subsection B of this section for any quarter in which it failed to meet a standard for one or more months. The quarterly reports shall be filed no later than the 15th day of the month following the close of the preceding quarter subject to a docketed commission investigation of its service quality relating to this section shall file reports as directed by the commission ] . The reports [ ~~and the data they contain shall not be deemed confidential and~~ ] shall be subject to commission audit. [ ~~A LEC may request the commission to exempt it from the filing of quarterly reports by demonstrating that its services, in whole or in part, are provided through the resale or lease of another LEC's services or facilities over which it has no direct control. ]~~~~

B. A LEC shall comply with the following performance standards:

1. A LEC shall restore [ ~~no less than 80% of all~~ ] out-of-service trouble reports within 24 hours, [ ~~and no less than 95% within 48 hours,~~ ] per calendar month, on a statewide basis, [ ~~excluding Sundays and LEC-recognized holidays. A LEC shall calculate its results by dividing the number of out-of-service customer trouble reports restored within 24 hours and 48 hours respectively in the given month by the number of out-of-service customer trouble reports received in the given month. The quotient is then multiplied by 100 to produce the result as a percentage. A LEC may exclude (i) customer caused delays, and (ii) extended intervals that are explicitly accepted or requested by residential customers; a LEC shall submit to the commission's Division of Communications a satisfactory description of the criteria it will apply to determine an explicit acceptance or request by a residential customer and of the method it will employ to record such explicit acceptance or request for customers stating a medical necessity when restoration is feasible. As used in this subdivision, "feasible" means service can be restored unless there exists a condition beyond the control of a LEC ] .~~

2. A LEC shall [ ~~answer calls to its customer call centers with an average SAI of no greater than 60 seconds restore no less than 80% of out-of-service trouble reports within 48 hours, and no less than 95% within 96 hours,~~ ] per calendar month [ ~~, on a statewide basis, excluding Sundays and LEC-recognized holidays for business customers, and~~

excluding Saturdays, Sundays, and LEC-recognized holidays that do not result in three consecutive excluded days for residential customers ], A LEC [ subject to performance reporting pursuant to subsection A of this section ] shall calculate its results by dividing the [ ~~cumulative SAI in seconds in the given month by the number of calls answered by a live agent in the given month. A LEC shall exclude from its calculation customer-initiated web transactions and customer-initiated automated transactions~~ number of out-of-service customer trouble reports restored within 48 hours and 96 hours respectively in the given month by the number of out-of-service customer trouble reports restored in the given month. The quotient is then multiplied by 100 to produce the result as a percentage. A LEC may exclude customer-caused delays, and extended intervals that are explicitly accepted or requested by customers. Upon request by the commission's staff, a LEC shall submit for approval a satisfactory description of (i) the criteria the LEC will apply to determine such explicit acceptance or request by a customer, and (ii) the method the LEC will employ to record such explicit acceptance or request ].

3. A LEC shall [ ~~complete no less than 90% of installation service orders within five business days of a customer's request~~ answer calls to its repair customer call centers with an average SAI of no greater than 60 seconds and shall answer calls to its customer call centers with an average SAI of no greater than 180 seconds ], per calendar month, on a statewide basis. A LEC [ subject to performance reporting pursuant to subsection A of this section ] shall calculate its results by dividing the [ ~~number of installation service orders completed within five days~~ cumulative SAI in seconds ] in the given month by the number of [ ~~service orders received~~ calls answered by a live agent ] in the given month. [ ~~The quotient is then multiplied by 100 to produce the result as a percentage. A LEC may exclude~~ ] customer-requested [ ~~extended intervals that are explicitly accepted or requested by residential customers, customer-caused installation delays, and service orders for the installation of more than five NALs at one customer location; a LEC shall submit to the commission's Division of Communications a satisfactory description of the criteria it will apply to determine an explicit acceptance or request by a residential customer and of the method it will employ to record such explicit acceptance or request.~~ ] A LEC [ ~~may shall~~ ] exclude [ ~~installation service orders that involve porting telephone numbers, the delivery of which has been delayed by another LEC from its calculation~~ customer-initiated web transactions and customer-initiated automated transactions ].

4. A LEC shall [ ~~meet~~ complete ] no less than 90% of installation [ ~~and repair commitments requiring a field dispatch~~ service orders within five business days of a customer's request ], per calendar month, on a statewide

basis. A LEC [ subject to performance reporting pursuant to subsection A of this section ] shall calculate its results by dividing the number of installation [ ~~and repair commitments met in the given month by the number of commitments made~~ service orders completed within five days in the given month by the number of service orders completed ] in the given month. The quotient is then multiplied by 100 to produce the result as a percentage. [ A LEC may exclude customer-caused installation delays, service orders for the installation of more than five NALs at one customer location, and extended intervals that are explicitly accepted or requested by customers. Upon request by the commission's staff, a LEC shall submit for approval a satisfactory description of the criteria the LEC will apply to determine such explicit acceptance or request by a customer and the method the LEC will employ to record such explicit acceptance or request. A LEC may exclude installation service orders that involve porting telephone numbers, the delivery of which has been delayed by another LEC, or any other communication provider.

5. A LEC shall meet no less than 90% of installation and repair commitments, per calendar month, on a statewide basis. A LEC subject to performance reporting pursuant to subsection A of this section shall calculate its results by dividing the number of installation and repair commitments met in the given month by the number of commitments made in the given month. The quotient is then multiplied by 100 to produce the result as a percentage. ]

[ ~~5. 6.~~ ] A LEC shall not exceed a 16% repeat report rate, per calendar month, on a statewide basis. A LEC [ subject to performance reporting pursuant to subsection A of this section ] shall calculate its results by dividing the number of repeat reports in the given month by the number of trouble reports cleared in the given month. The quotient is then multiplied by 100 to produce the result as a percentage.

[ ~~6. 7.~~ ] A LEC shall not exceed a 0.35% central office trouble report rate, per calendar month, on a statewide basis. A LEC [ subject to performance reporting pursuant to subsection A of this section ] shall calculate its results by dividing the number of central office related trouble reports in the given month by the number of NALs at the end of the given month. The quotient is then multiplied by 100 to produce the result as a percentage.

[ ~~7. 8.~~ ] A LEC shall not exceed a 3.0% outside plant trouble report rate, per calendar month, on a statewide basis. A LEC [ subject to performance reporting pursuant to subsection A of this section ] shall calculate its results by dividing the number of outside plant related trouble reports in the given month by the number of NALs at the end of the given month. The quotient is then multiplied by 100 to produce the result as a percentage.

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~~[ C. Notwithstanding that quarterly performance reports are compiled on a statewide basis, the commission may, in its discretion, direct that analogous reports be filed to assure that LECs comply with the performance standards set out in subdivisions B 1, B 3, ] and [ B 4, B 5, B 6, and B 7 of this section, for any individual central office serving area of any LEC. The commission also may direct that additional reports be filed to provide information, to be prescribed by the commission, not included in the quarterly performance reports. A LEC's failure to comply with the performance standards set out in subdivisions B 1, B 3, ] and [ B 4, B 5, B 6, and B 7 for any individual central office serving area may result in enforcement proceedings as provided in 20VAC5-428-110.~~

~~D. If a customer indicates that a medical necessity requires prompt restoration of service, a LEC shall restore service within 24 hours. ]~~

## **20VAC5-428-100. Generally inadequate service.**

A LEC shall, at the direction of the commission following notice and an opportunity for hearing, address any concern for inadequate service quality not specifically addressed in this chapter.

## **20VAC5-428-110. Enforcement and sanctions.**

~~[ The A. For purposes of enforcing all of the provisions of this chapter, including 20VAC5-428-90 B 1 but excluding the remainder of 20VAC5-428-90, the ] commission may, upon motion, and after opportunity for written response from the LEC [ and an opportunity for hearing, ] in accordance with [ 5VAC5-20-100, issue such order or orders as it deems necessary to notify a LEC of the LEC's obligation and need to satisfy the provisions of this chapter. If a LEC fails to comply with the directives of such order, the commission may, following notice and an opportunity for hearing, 5VAC5-20-90 ] levy one or more of the penalties and sanctions authorized by §§ 12.1-13, 12.1-33, and 56-483 of the Code of Virginia for violations of [ such order provisions of this chapter ].~~

[ B. For purposes of enforcing 20VAC5-428-90, other than 20VAC5-428-90 B 1, the commission may, upon motion, and after opportunity for written response from the LEC in accordance with 5VAC5-20-90, issue such order or orders as it deems necessary to notify a LEC of the LEC's obligation and need to satisfy the provisions of this chapter. If a LEC fails to comply with the directives of such order, the commission may, following notice and an opportunity for hearing in accordance with 5VAC5-20-90, levy one or more of the penalties and sanctions authorized by §§ 12.1-13, 12.1-33, and 56-483 of the Code of Virginia for violations of such order. For purposes of enforcement under this section, the commission may, if it deems necessary, further prospectively order a LEC to meet a 20VAC5-428-90 standard each day, based on a rolling 30-day average, notwithstanding that the

standard is based on a calendar month under 20VAC5-428-90 and each day that the LEC does not meet such standard may constitute a separate violation of this chapter. ]

## **20VAC5-428-120. Commission authority.**

The commission may, at its discretion, waive or grant exceptions to any provision of this chapter.

## **[ 20VAC5-428-130. Sunset provision.**

This chapter may sunset on December 31, 2012, if, following a proceeding, the commission determines that this chapter or other regulations are no longer necessary to ensure reasonably adequate service. ]

VA.R. Doc. No. R08-1363; Filed September 11, 2009, 3:29 p.m.



## **TITLE 24. TRANSPORTATION AND MOTOR VEHICLES**

### **COMMONWEALTH TRANSPORTATION BOARD**

#### **Final Regulation**

**REGISTRAR'S NOTICE:** The Commonwealth Transportation Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 3 of the Code of Virginia, which exempts regulations relating to the location, design, specifications or construction of public buildings or other facilities, and § 2.2-4002 B 4 of the Code of Virginia, which exempts regulations relating to grants of state or federal funds or property. The Commonwealth Transportation Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **24VAC30-271. Economic Development Access Fund Policy (amending 24VAC30-271-20).**

**Statutory Authority:** §§ 33.1-12 and 33.1-221 of the Code of Virginia.

**Effective Date:** September 15, 2009.

**Agency Contact:** William Dandridge, Transportation Engineer Senior, Department of Transportation, Local Assistance Division, 4th Floor Annex, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-2743, FAX (804) 786-2603, or email [william.dandridge@vdot.virginia.gov](mailto:william.dandridge@vdot.virginia.gov).

#### **Summary:**

*The amendments increase the maximum unmatched allocation of economic development access funds to a limit of \$500,000 that may be allocated in any fiscal year in any county, city, or town that receives highway maintenance payments under § 33.1-41.1 of the Code of Virginia. The*

*amendment limits the maximum eligibility of unmatched funds to 20% of the capital outlay of the designated eligible establishments. The limit on supplemental economic access development funds over and above the unmatched eligibility is increased to 20%.*

**24VAC30-271-20. General provisions.**

A. The use of economic development access funds shall be limited to:

1. Providing adequate access to economic development sites on which new or substantially expanding manufacturing, processing and, research and development facilities; distribution centers; regional service centers; corporate headquarters or other establishments that also meet basic employer criteria as determined by the Virginia Economic Development Partnership in consultation with the Virginia Department of Business Assistance; and

2. Improving existing roads that may not be adequate to serve the establishments as described in subdivision 1 of this subsection.

B. Economic development access funds shall not be used for the acquisition of rights of way or adjustment of utilities. These funds are to be used only for the actual construction and engineering of a road facility adequate to serve the traffic generated by the new or expanding eligible establishments.

C. Economic development access funds may not be used for the construction of access roads to schools, hospitals, libraries, airports, armories, speculative office buildings, shopping centers, apartment buildings, professional offices, residential developments, churches, hotels, motels, government installations, or similar facilities, whether public or private. (Access roads to licensed, public-use airports, while provided for in § 33.1-221 of the Code of Virginia, are funded and administered separately through 24VAC30-450, Airport Access Funding.)

D. No cost incurred prior to the board's approval of an allocation from the economic development access funds may be reimbursed by such funds. Economic development access funds shall be authorized only after certification that the economic development establishment as listed or meeting the criteria as described will be built under firm contract, or is already constructed, or upon presentation of acceptable surety in accordance with § 33.1-221 A of the Code of Virginia.

E. When an eligible establishment is not yet constructed or under firm contract and a local governing body guarantees by bond or other acceptable surety that such will occur, the maximum time limit for such bond shall be five years, beginning on the date of the allocation of the economic development access funds by the Commonwealth Transportation Board. At the end of the five-year period, the amount of economic development access funds expended on the project and not justified by eligible capital outlay of one

or more establishments acceptable to the board shall be reimbursed to the Virginia Department of Transportation (VDOT) voluntarily by the locality or by forfeiture of the surety. In the event that, after ~~the Department of Transportation~~ VDOT has been reimbursed, but still within 24 months immediately following the end of the five-year period, the access funds expended come to be justified by eligible capital outlay of one or more eligible establishments, then the locality may request a refund of one-half of the sum reimbursed to ~~the Department of Transportation~~ VDOT, which request may be granted if funds are available, on a first-come, first-served basis in competition with applications for access funds from other localities.

F. Economic development access funds shall not be used to construct or improve roads on a privately owned ~~plant~~ economic development site. Nor shall the construction of a new access road to serve any economic development site on a parcel of land that abuts a road constituting a part of the systems of state highways or the road system of the locality in which it is located be eligible for economic development access funds, unless the existing road is a limited access highway and no other access exists. Further, where the existing road is part of the road system of the locality in which it is located, or the secondary system of state highways, economic development access funds may be used to upgrade the existing road only to the extent required to meet the needs of traffic generated by the new or expanding eligible establishment.

In the event an economic development site has access according to the foregoing provisions of this chapter, but it can be determined that such access is not adequate in that it does not provide for safe and efficient movement of the traffic generated by the eligible establishment on the site or that the site's traffic conflicts with the surrounding road network to the extent that it poses a safety hazard to the general public, consideration will be given to funding additional improvements. Such projects shall be evaluated on a case-by-case basis upon request, by resolution, from the local governing body. Localities are encouraged to establish planning policies that will discourage incompatible mixes such as industrial and residential traffic.

G. Not more than ~~\$300,000~~ \$500,000 of unmatched economic development access funds may be allocated in any fiscal year for use in any county, city or town that receives highway maintenance payments under § 33.1-41.1 of the Code of Virginia. A town whose streets are maintained under either § 33.1-79 or § 33.1-82 of the Code of Virginia shall be considered as part of the county in which it is located. The maximum eligibility of unmatched funds shall be limited to ~~10%~~ 20% of the capital outlay of the designated eligible establishments. The unmatched eligibility may be supplemented with additional economic development access funds, in which case the supplemental access funds shall be not more than \$150,000, to be matched dollar-for-dollar from

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funds other than those administered by ~~this~~ the board. The supplemental economic development access funds over and above the unmatched eligibility shall be limited to ~~5.0%~~ 20% of the capital outlay of the designated eligible establishments as previously described. Such supplemental funds shall be considered only if the total estimated cost of eligible items for the economic development access improvement exceeds ~~\$300,000~~ \$500,000.

If an eligible site is owned by a regional industrial facility authority, as defined in § 15.2-6400 of the Code of Virginia, funds may be allocated for construction of an access road project to that site without penalty to the jurisdiction in which the site is located. This provision may be applied to one regional project per fiscal year in any jurisdiction with the same funding limitations as prescribed for other individual projects.

H. Eligible items of construction and engineering shall be limited to those that are essential to providing an adequate facility to serve the anticipated traffic while meeting all appropriate Commonwealth Transportation Board and state policies and standards. However, additional pavement width or other features may be eligible where necessary to qualify the road facility in a city or town for maintenance payments under § 33.1-41.1 of the Code of Virginia.

I. It is the intent of the board that economic development access funds not be anticipated from year to year. Unused eligibility cannot be allowed to accumulate and be carried forward from one fiscal year to another.

J. The Commonwealth Transportation Board will consult and work closely with the Virginia Economic Development Partnership (VEDP) and the Department of Business Assistance (DBA) in determining the use of economic development access funds and will rely on the recommendations of the VEDP and the DBA in making decisions as to the allocation of these funds. In making its recommendations to ~~this~~ the board, the VEDP and DBA will take into consideration the impact of the proposed facility on the employment and tax base of both the area in which the facility is to be located and the Commonwealth of Virginia.

K. Prior to the formal request for the use of economic development access funds to provide access to new or expanding eligible establishments, the location of the access road shall be submitted for approval by ~~the Virginia Department of Transportation~~ VDOT. ~~The Virginia Department of Transportation~~ VDOT shall take into consideration the cost of the facility as it relates to the location and as it relates to the possibility of the future extension of the road to serve other possible eligible establishments, as well as the future development of the area traversed.

L. Prior to ~~this~~ the board's allocation of funds for such construction or road improvements to an eligible economic

development establishment proposing to locate or expand in a county, city or town, the governing body shall by resolution request the access funds and shall be responsible for the preliminary negotiations with the eligible establishment and others who may be interested. Engineers of ~~the Virginia Department of Transportation~~ VDOT will be available for consultation with the governing bodies and others, and may prepare surveys, plans, engineering studies, and cost estimates.

M. The Commonwealth Transportation Commissioner is directed to establish administrative procedures to assure adherence to and compliance with the provisions of this chapter and legislative directives ~~are adhered to and complied with~~.

VA.R. Doc. No. R10-2108; Filed September 15, 2009, 9:55 a.m.

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# GENERAL NOTICES/ERRATA

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## 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 September 15, 2009, and September 21, 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 Sixty-Three (09)

Virginia's Instant Game Lottery 1139; "Fuzzy Dice" Final Rules for Game Operation (effective 9/11/09)

Director's Order Number Sixty-Four (09)

Virginia's Instant Game Lottery 1143; "Hot \$100,000" Final Rules for Game Operation (effective 9/11/09)

Director's Order Number Sixty-Five (09)

Virginia's Instant Game Lottery 1147; "Goin' Green" Final Rules for Game Operation (effective 9/11/09)

Director's Order Number Sixty-Six (09)

Virginia's Instant Game Lottery 1151; "100X The Money" Final Rules for Game Operation (effective 9/11/09)

Director's Order Number Sixty-Seven (09)

Virginia's Instant Game Lottery 1154; "All The Money" Final Rules for Game Operation (effective 9/11/09)

Director's Order Number Sixty-Eight (09)

Virginia Lottery's "It Pays To Play Sweepstakes" Final Rules for Game Operation (effective 9/18/09)

Director's Order Number Sixty-Nine (09)

Virginia Lottery's "3-4-5 Cash Second Chance Sweepstakes" Final Rules for Game Operation (effective 9/18/09)

Director's Order Number Seventy-One (09)

Virginia's Instant Game Lottery 1145; "Haunted Fortune" Final Rules for Game Operation (effective nunc pro tunc 9/15/09)

## STATE WATER CONTROL BOARD

### Public Notice – Approval of Water Quality Management Planning Actions

Notice of action: The State Water Control Board (board) is considering the approval of six total maximum daily load (TMDL) reports and nine TMDL modifications, and granting authorization to include the TMDL reports and modifications

in the appropriate water quality management plans (WQMPs).

Purpose of notice: The board is seeking comment on the proposed approvals and authorizations. The purpose of these actions is to approve six TMDL reports and nine TMDL modifications as Virginia's plans for the pollutant reductions necessary for attainment of water quality goals in several impaired waterbodies. These actions are taken in accordance with the Public Participation Procedures for Water Quality Management Planning.

Public comment period: October 12, 2009, to November 10, 2009.

Description of proposed action: DEQ staff intends to recommend (i) that the DEQ director approve the TMDL reports and TMDL modifications listed below as Virginia's plans for the pollutant reductions necessary for attainment of water quality goals in the impaired segments, and (ii) that the DEQ director authorize inclusion of the TMDL reports and TMDL modifications in the appropriate WQMPs. No regulatory amendments are required for these TMDLs and their associated waste load allocations.

At previous meetings, the board voted unanimously to delegate to the DEQ director the authority to approve TMDLs that do not include waste load allocations requiring regulatory adoption by the board, provided that a summary report of the action the director plans to take is presented to the board prior to the director approving the TMDL reports. The TMDLs included in this public notice will be approved using this delegation of authority.

The TMDLs listed below were developed in accordance with federal regulations (40 CFR § 130.7) and are exempt from the provisions of Article II (§ 2.2-4006 et seq.) of the Virginia Administrative Process Act. The TMDLs have been through the TMDL public participation process contained in DEQ's Public Participation Procedures for Water Quality Management Planning. The public comment process provides the affected stakeholders an opportunity for public appeal of the TMDLs. EPA approved all TMDL reports presented under this public notice. The approved reports can be found at <https://www.deq.virginia.gov/TMDLDataSearch/ReportSearch.h.jsp>.

Affected Waterbodies and Localities:

Potomac River & Shenandoah River Basins:

1. "Gardner, Jackson and Bonum Creeks Total Maximum Daily Load (TMDL) Report for Shellfish Condemnation Areas Bacteria TMDLs for Occupacia Creek and Farmers Hall Creek Essex County, Virginia"

- 3 bacteria TMDLs, located in Westmoreland County, propose bacteria reductions for portions of the watershed to address VDH Shellfish Area Condemnations



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## General Notices/Errata

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2. "Fecal Coliform TMDL for Naked Creek in Augusta and Rockingham Counties, Virginia" (modification)

- 1 bacteria TMDL, located in Rockingham County, proposes bacteria reductions for portions of the watersheds to address a primary contact (swimming use) impairment

3. "Bacteria TMDL for Limestone Branch Loudoun County, Virginia" (modification)

- 1 bacteria TMDL, located in Loudoun County, proposes bacteria reductions for portions of the watersheds to address a primary contact (swimming use) impairment

In the James River Basin:

4. "Total Maximum Daily Loads for the Appomattox River Basin, Appomattox, Buckingham, Cumberland, Prince Edward, Amelia, Nottoway, Powhatan, Chesterfield, Dinwiddie, and Prince George Counties and Cities of Petersburg, Colonial Heights, and Hopewell" (modification)

- 20 bacteria TMDLs, propose bacteria reductions for portions of the watersheds to address a primary contact (swimming use) impairment

5. "Total Maximum Daily Load Development for the James River and Tributaries – Lower Piedmont Region" (modification)

- 6 bacteria TMDLs, located in Goochland and Fluvanna Counties, propose bacteria reductions for portions of the watersheds to address a primary contact (swimming use) impairment

6. "Bacterial Total Maximum Daily Load Development for the James River - Hopewell to Westover" (modification)

- 4 bacteria TMDLs, located in Charles City and Prince George Counties and City of Hopewell, propose bacteria reductions for portions of the watersheds to address a primary contact (swimming use) impairment

7. "Bacteria TMDL for Tuckahoe Creek, Little Tuckahoe Creek, Anderson, Broad, Georges and Readers Branches, and Deep Run Henrico, Goochland and Hanover Counties, Virginia" (modification)

- 6 bacteria TMDLs, propose bacteria reductions for portions of the watersheds to address a primary contact (swimming use) impairment

In the Chesapeake Bay-Small Coastal-Eastern Shore Basin:

8. "Total Maximum Daily Loads of Fecal Coliform for the Restricted Shellfish Harvesting/Growing Areas of the Pocomoke River in the Lower Pocomoke River Basin and Pocomoke Sound Basin in Somerset and Worcester Counties, Maryland and Accomack County, Virginia"

- 2 bacteria TMDLs, located in Accomack County, propose bacteria reductions for portions of the watersheds to address VDH Shellfish Area Condemnations

9. "Total Maximum Daily Loads of Fecal Coliform for the Restricted Shellfish Harvesting/Growing Areas of the Pocomoke River in the Lower Pocomoke River Basin and Pocomoke Sound Basin in Somerset and Worcester Counties, Maryland and Accomack County, Virginia" (modification)

- 2 bacteria TMDLs, located in Accomack County, propose bacteria reductions for portions of the watersheds to address VDH Shellfish Area Condemnations

10. "Owens Pond, Little Taskmakers Creek, and Un-named Tributary to Chesapeake Bay (Big Fleets Pond) Total Maximum Daily Load (TMDL) Report for Shellfish Condemnation Impaired Due to Bacteria Contamination

- 3 bacteria TMDLs, located in Northumberland County, propose bacteria reductions for portions of the watersheds to address VDH Shellfish Area Condemnations

11. "TMDL Report for Chesapeake Bay Shellfish Waters: Oyster Harbor Bacterial Impairment in Northampton County, Virginia"

- 1 bacteria TMDL, located in Northampton County, proposes bacteria reductions for portions of the watersheds to address VDH Shellfish Area Condemnations

12. "TMDL for Fecal Coliform Bacteria in the Lower Piankatank River" (modification)

- 3 bacteria TMDLs, located in Middlesex County, propose bacteria reductions for portions of the watersheds to address VDH Shellfish Area Condemnations

In the Rappahannock River Basin:

13. "Bacteria TMDLs for Occupacia Creek and Farmers Hall Creek Essex County, Virginia"

- 2 bacteria TMDLs, located in Essex County, propose bacteria reductions for portions of the watersheds to address primary contact (swimming use) impairments

In the York River Basin:

14. "Total Maximum Daily Load (TMDL) Report for Poropotank River and Adams Creek"

- 2 bacteria TMDLs, located in Gloucester County, propose bacteria reductions for portions of the watersheds to address VDH Shellfish Area Condemnations

15. "Bacteria Total Maximum Daily Load Development for the Pamunkey River Basin" (modification)

- 11 bacteria TMDLs, located in Louisa, Orange, Caroline, Hanover, King William and New Kent Counties, propose bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments

How to comment: The DEQ accepts written comments by email, fax and postal mail. All written comments must include the full name, address, and telephone number of the

person commenting and be received by DEQ by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision.

To review documents: The TMDL reports and TMDL implementation plans are available on the DEQ website at <https://www.deq.virginia.gov/TMDLDataSearch/ReportSearch.h.jsp> and by contacting the DEQ representative named below. The electronic copies are in PDF format and may be read online or downloaded.

Contact for public comments, document requests and additional information: David S. Lazarus, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4299, FAX (804) 698-4116, or email [david.lazarus@deq.virginia.gov](mailto:david.lazarus@deq.virginia.gov).

### **Proposed Consent Order - Gurcharan Lail**

An enforcement action has been proposed for Gurcharan Lail for alleged violations at the One Stop Trailer Park Sewage Treatment Plant in Loudoun County, Virginia. A description of the proposed action is available at the DEQ office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Stephanie Bellotti will accept comments by email at [stephanie.bellotti@deq.virginia.gov](mailto:stephanie.bellotti@deq.virginia.gov), FAX (703) 583-3821, or postal mail Virginia Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from October 13, 2009, to November 12, 2009.

### **Proposed Special Order - Hurricane Ridge Dairy Farm, Inc.**

An enforcement action has been proposed for Hurricane Ridge Dairy Farm, Inc. for alleged violations occurring in Patrick County. The company had an unauthorized discharge of pollutants at the facility in violation of permit conditions Parts I.B.1 and III.R and 9VAC25-192-50 and § 62.1-44.5 A of the Code of Virginia. A description of the proposed action is available at the DEQ office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Steven B. Wright will accept comments by email [steven.wright@deq.virginia.gov](mailto:steven.wright@deq.virginia.gov), FAX (540) 562-6725 or postal mail Steve Wright, Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from October 12, 2009, to November 11, 2009.

### **Proposed Special Order - J. W. Holdings, Inc. and Craddock Oaks Developers, Inc.**

An enforcement action has been proposed for J. W. Holdings, Inc. and Craddock Oaks Developers, Inc. at a site in Bedford County, Virginia, for alleged violations of the State Water Control Law. The proposed enforcement action requires a civil charge. A description of the proposed action is available at the DEQ office named below or online at

[www.deq.virginia.gov](http://www.deq.virginia.gov). Robert Steele will accept comments by email at [robert.steele@deq.virginia.gov](mailto:robert.steele@deq.virginia.gov), FAX (540) 562-6725, or postal mail at Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from October 12, 2009, to November 14, 2009.

### **Proposed Consent Order - Lakewood Partners, LLC**

An enforcement action has been proposed for Lakewood Partners, LLC, for alleged violations at Lakewood Mobile Home Court in Halifax County. The proposed enforcement action contains a Schedule of Compliance that details the corrective action required and payment of a civil charge. A description of the proposed action is available at the DEQ office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). G. Marvin Booth, III will accept comments by email at [marvin.booth@deq.virginia.gov](mailto:marvin.booth@deq.virginia.gov), FAX (434) 582-5125 or postal mail at Department of Environmental Quality, Blue Ridge Regional Office, 7705 Timberlake Road, Lynchburg, VA 24502 from October 12, 2009, to November 12, 2009.

## **VIRGINIA CODE COMMISSION**

### **Notice to State Agencies**

**Mailing Address:** Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

### **Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed**

Beginning with Volume 26, Issue 1 of the Virginia Register of Regulations dated September 14, 2009, the Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed will no longer be published in the Virginia Register of Regulations. The cumulative table may be accessed on the Virginia Register Online webpage at <http://register.dls.virginia.gov/cumultab.htm>.

### **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

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## General Notices/Errata

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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

#### STATE CORPORATION COMMISSION

Title of Regulation: **24VAC30-73. Access Management Regulations: Minor Arterials, Collectors, and Local Streets.**

Publication: 26:1 VA.R. 105-116 September 14, 2009.

Correction to Final Regulation:

Statutory Authority: change to § 33.1-198.1 of the Code of Virginia.

Agency Contact: change telephone number for Paul Grasewicz to (804) 786-0628

VA.R. Doc. R09-1410