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Virginia Register of Regulations

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THE VIRGINIA REGISTER OF REGULATIONS (USPS-001831) is published biweekly, with quarterly cumulative indices published in January, April, July and October, for $179.00 per year by LexisNexis Matthew Bender, 1275 Broadway, Albany, NY 12204. Periodical postage is paid at Albany, NY and at additional mailing offices. POSTMASTER: Send address changes to LexisNexis Matthew Bender, 1275 Broadway, Albany, NY 12204.

THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

CITATION TO THE *VIRGINIA REGISTER*

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

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

PUBLICATION SCHEDULE AND DEADLINES

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

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*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 2. AGRICULTURE

PESTICIDE CONTROL BOARD

Initial Agency Notice

Title of Regulation: **2VAC20-51. Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act.**

Statutory Authority: § 3.2-3931 of the Code of Virginia.

Name of Petitioner: Cecil R. Harris, Jr., County Administrator, Hanover County; Kimberly A. Hynes, Executive Director, Central Virginia Waste Management Authority.

Nature of Petitioner's Request: Requesting that certain government employees who utilize FIFRA 25(b) minimum-risk pesticide products be exempt from the applicator certification requirements of the Virginia Pesticide Control Act when the only intended use of those products is to prevent immediate personal harm from stinging or biting insects.

Agency's Plan for Disposition of the Request: Agency will consider this request at its next quarterly meeting following the comment period.

Public comments may be submitted until December 1, 2009.

Agency Contact: Liza Fleeson, Program Manager, Office of Pesticide Services, Virginia Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6559, FAX (804) 786-9149, or email liza.fleeson.vdacs.virginia.gov.

VA.R. Doc. No. R10-20; Filed October 20, 2009, 11:55 a.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Initial Agency Notice

Title of Regulation: **9VAC25-260. Water Quality Management Planning Regulation.**

Statutory Authority: § 62.1-44.15 of the Code of Virginia.

Name of Petitioner: Town of Urbanna.

Nature of Petitioner's Request: To amend the State Water Quality Standards Regulation (9VAC25-260) to designate Urbanna Creek from its mouth to its headwaters and all tributaries as Exceptional State Waters (Tier 3).

Agency's Plan for Disposition of the Request: Public comment will be accepted until November 30, 2009. The State Water Control Board will consider whether or not to move forward with the rulemaking at their first regular meeting of 2010.

Public comments may be submitted until November 30, 2009.

Agency Contact: David C. Whitehurst, Environmental Specialist I, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4121, FAX (804) 592-5482, or email david.whitehurst@deq.virginia.gov.

VA.R. Doc. No. R10-25; Filed October 19, 2009, 3:22 p.m.

Initial Agency Notice

Title of Regulation: **9VAC25-720. Water Quality Management Planning Regulation.**

Statutory Authority: § 62.1-44.15 of the Code of Virginia.

Name of Petitioner: L. Waverly Smith, Environmental Engineer.

Nature of Petitioner's Request: By letter dated October 9, 2009 - Amend the Water Quality Management Planning Regulation (9VAC25-720-60 C, James River Basin), regarding the total nitrogen (TN) and total phosphorus (TP) waste load allocations (WLAs) for the DuPont-Spruance facility (VPDES Permit #VA0004669; General Permit #VAN040079). Current nutrient WLAs are TN = 201,080 lb/yr; TP = 7,816 lb/yr, based on a discharge flow of 23.33 million gallons per day (MGD). DuPont-Spruance presents two amendment options: (i) allow determination of compliance with the existing WLAs at Outfall 001 based on just the loads attributable to manufacturing processes on the site, "netting" out nutrient content of the raw intake water pumped from the James; (ii) amend the WLAs to TN = 197,390 lbs/yr (a 3,690 lb/yr decrease) and TP = 11,840 lbs/yr (a 4,025 lb/yr increase), based on: (a) relocating the compliance monitoring point from combined Outfall 001 to internal process Outfall 101, thereby eliminating contributions of noncontact cooling water and storm water from the regulated discharge flow; (b) achieving nutrient reduction treatment (NRT) equivalent to POTW enhanced NRT (70-75% removal); (c) setting design flow of the process wastewater system at 12.96 MGD, based on maximum effluent pumping capacity out of the treatment lagoons.

Agency's Plan for Disposition of the Request: Public-notice receipt of the petition and provide for a 21-day public comment period. Upon close of the public comment period, review any comments received and then make a decision to either initiate a rulemaking or place the petition on the board's next meeting agenda for their consideration.

Public comments may be submitted until November 30, 2009.

Agency Contact: John M. Kennedy, Chesapeake Bay Program Manager, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4312, toll free (800) 592-5482, or email john.kennedy@deq.virginia.gov.

VA.R. Doc. No. R10-19; Filed October 19, 2009, 3:22 p.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 2. AGRICULTURE

PESTICIDE CONTROL BOARD

Withdrawal of Notice of Intended Regulatory Action

The Virginia Pesticide Control Board has withdrawn the Notice of Intended Regulatory Action for **2VAC20-20, Rules and Regulations for Enforcement of the Virginia Pesticide Law**, and **2VAC20-25, Rules and Regulations for the Registration of Pesticides and Pesticide Products Under Authority of the Virginia Pesticide Control Act**, which was published 22:6 VA.R. 776 November 28, 2005.

Agency Contact: Perida Giles, Virginia Pesticide Control Board, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-5175, or email perida.giles@vdacs.virginia.gov.

VA.R. Doc. No. R06-110; Filed October 19, 2009, 4:59 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Withdrawal of Notice of Intended Regulatory Action

The State Board of Health is withdrawing the Notice of Intended Regulatory Action for **12VAC5-550, Board of Health Regulations Governing Vital Records**, which was published 23:24 VA.R. 3996 August 6, 2007. The intended action was accomplished in a separate process.

Agency Contact: Janet Rainey, Director and State Registrar, Department of Health, 1601 Willow Lawn Drive, Suite 275, Richmond, VA 23230, telephone (804) 662-6207, FAX (804) 662-7262, or email janet.rainey@vdh.virginia.gov.

VA.R. Doc. No. R07-645; Filed October 14, 2009, 10:24 a.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT OF SOCIAL SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending the following regulations: **22VAC40-160, Fee Requirements for Processing Applications.** The purpose of the proposed action is to revise the schedule for fees charged to process the licensing applications of assisted living facilities, adult day care centers, and child welfare agencies. Fees for processing licensing applications have not increased since 1991. The Code of Virginia requires the fees to be used for the development and delivery of training for operators and staff of assisted living facilities, adult day care centers, and child welfare agencies. Currently, the cost of developing and delivering training far exceeds the amount collected for fees. The majority of the cost of provider training is covered by the use of state and federal funds.

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

Statutory Authority: §§ 63.2-217 and 63.2-1700 of the Code of Virginia.

Public Comment Deadline: December 9, 2009.

Agency Contact: Karen H. Cullen, Program Development Consultant, Department of Social Services, Division of Licensing Programs, 7 North Eighth Street, Richmond, VA 23219, telephone (804) 726-7152, FAX (804) 726-7132, TTY (800) 828-1120, or email karen.cullen@dss.virginia.gov.

VA.R. Doc. No. R10-2113; Filed October 21, 2009, 9:09 a.m.

TITLE 8. EDUCATION

GEORGE MASON UNIVERSITY

REGISTRAR'S NOTICE: George Mason University is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

Proposed Regulation

Titles of Regulations: **8VAC35-30. Space Utilization and Scheduling Policies and Procedures (repealing 8VAC35-30-10 through 8VAC35-30-240).**

8VAC35-31. Space Use (adding 8VAC35-31-10 through 8VAC35-31-50).

Statutory Authority: § 23-91.29 of the Code of Virginia.

Agency Contact: Kenneth W. Hubble, Agency Regulatory Coordinator, George Mason University, 4400 University Drive, Fairfax, VA 22030, telephone (703) 993-3091 or email khubble@gmu.edu.

Summary:

This action repeals the current space use regulation and promulgates a new space use regulation to incorporate university policies within designated areas.

CHAPTER 31
SPACE USE

8VAC35-31-10. Scope.

This chapter applies to all George Mason University faculty, staff, students, university contractors, and the general public.

8VAC35-31-20. Policy statement.

George Mason University facilities are intended primarily for the use of its students, faculty, and staff in their efforts to advance the educational mission of the university. No use shall be permitted that is inconsistent with the mission of the university.

8VAC35-31-30. Definitions.

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

"Educational enclave" means that portion of university property in academic buildings, administrative office buildings, student residence buildings, dining facilities, athletic facilities, child care facilities, or that portion of university property in use for university-sponsored or university-sanctioned sporting, entertainment, or educational events.

"University property" means any property owned, leased, or controlled by George Mason University.

8VAC35-31-40. Entry upon, and use of, university property.

A. Entry upon, or use of, university property in the educational enclave shall be in accord with all applicable university policies.

B. Entry upon, or use of, university property outside the educational enclave for noncommercial purposes is permitted if otherwise lawful and does not interfere with educational functions.

C. Entry upon, or use of, university property for commercial purposes shall be in accord with all applicable university policies.

8VAC35-31-50. Persons lawfully in charge.

In addition to individuals authorized by university policy, George Mason University police officers are lawfully in charge for the purposes of forbidding entry upon or remaining upon university property in violation of this regulation.

VA.R. Doc. No. R10-2188; Filed October 14, 2009, 3:34 p.m.

Proposed Regulation

Title of Regulation: **8VAC35-40. Vending Sales and Solicitation (repealing 8VAC35-40-10 through 8VAC35-40-160).**

Statutory Authority: § 23-91.26 of the Code of Virginia.

Agency Contact: Kenneth W. Hubble, Agency Regulatory Coordinator, George Mason University, 4400 University Drive, Fairfax, VA 22030, telephone (703) 993-3091 or email khubble@gmu.edu.

Summary:

The proposed action repeals the Vending Sales and Solicitation regulation. Activity proscribed in this regulation is either subject to other regulation or governed by contract.

VA.R. Doc. No. R10-2192; Filed October 14, 2009, 3:33 p.m.

Proposed Regulation

Title of Regulation: **8VAC35-50. Poster Posting Policy and Procedures (repealing 8VAC35-50-10 through 8VAC35-50-180).**

Statutory Authority: § 23-91.29 of the Code of Virginia.

Agency Contact: Kenneth W. Hubble, Agency Regulatory Coordinator, George Mason University, 4400 University Drive, Fairfax, VA 22030, telephone (703) 993-3091 or email khubble@gmu.edu.

Summary:

The proposed action repeals the Poster Posting Policy and Procedures regulation. Activity proscribed in the regulation is either subject to other regulation or governed by contract.

VA.R. Doc. No. R10-2193; Filed October 14, 2009, 3:33 p.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Proposed Regulation

Title of Regulation: **9VAC25-580. Underground Storage Tanks: Technical Standards and Corrective Action Requirements (amending 9VAC25-580-10, 9VAC25-580-20, 9VAC25-580-50, 9VAC25-580-120, 9VAC25-580-130, 9VAC25-580-140; adding 9VAC25-580-125, 9VAC25-580-370).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.34:9 of the Code of Virginia; 40 CFR Parts 280 and 281.

Public Hearing Information:

December 17, 2009 - 1 p.m. - Department of Environmental Quality, 629 East Main Street, 2nd Floor Training Room, Richmond, VA

Public Comment Deadline: January 8, 2010.

Agency Contact: Russell Ellison, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4269, FAX (804) 698-4266, or email russell.ellison@deq.virginia.gov.

Basis: The legal basis is the State Water Control Law. Specifically, § 62.1-44.34:9 of the Code of Virginia authorizes the board to promulgate such regulations as may be necessary to carry out its powers and duties with regard to underground storage tanks in accordance with applicable federal laws and regulations. Section 62.1-44.34:9 of the Code of Virginia authorizes the board to apply for such funds as may become available under federal acts and transmit such funds to appropriate persons.

Purpose: The amendments are necessary to protect the health, safety, or welfare of citizens of the Commonwealth. Secondary containment for new and replaced USTs within 1,000 feet of a public water supply or potable well will help prevent future UST leaks and limit the extent and impact of contamination. A delivery prohibition program will provide added incentive for UST owner/operators to maintain compliant tank systems. Compliant tank systems reduce the likelihood and severity of petroleum leaks into the environment. An operator training program will educate UST operators about how to maintain compliant tank systems and how to recognize and respond to problems associated with leaking USTs. Operator familiarity with UST regulatory requirements and with their own UST systems will increase compliance, help prevent future UST releases, and limit the extent, impact, and cleanup costs of contamination in the event of a release.

Substance: Key changes are as follows:

1. Amend 9VAC25-580-10 to add new definitions that will apply to the new secondary containment, delivery prohibition, and operator training requirements.

2. Minor changes to 9VAC25-580-20 accommodate proper references to the other substantive changes.

3. Amend 9VAC25-580-50 and 9VAC25-580-140 to require secondary containment for all new tanks and piping within 1,000 feet of existing community water systems or other potable drinking water wells.

4. Add 9VAC25-580-125 to identify specific classes of UST operators and require training for those classes of UST operators.

5. Add 9VAC25-580-370 to prohibit delivery of petroleum products to tanks deemed ineligible by the board due to noncompliance. This new section of the regulation will contain criteria for determining what tanks are ineligible for petroleum delivery, the process for identifying a tank as ineligible, the methods for marking the tanks and providing notice to owners/operators and delivery companies that the tanks are ineligible, and the criteria for reclassifying ineligible tanks as eligible.

The board followed the U.S. Environmental Protection Agency's (EPA) grant guidelines for secondary and containment, delivery prohibition, and operator training to develop the amendments.

Issues: The primary advantages to the public are the diminished impacts from leaking USTs to drinking water supplies, wells, and the reduction in the extent of any future releases. The disadvantages are the incremental cost burden to businesses that will be incurred to install and replace USTs with required secondary containment and train their operators, and the cost to UST owners who have lost the ability to accept fuel deliveries to a noncompliant UST.

The primary advantages to the agency include better deterrence against noncompliant USTs (Delivery Prohibition) and early discovery of leaking USTs in cases where secondarily contained systems exist. The primary agency disadvantage is the cost to implement and oversee the new program activities.

Operator training and delivery prohibition efforts have been in existence and worked in other states for years to better limit violations and releases.

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

Summary of the Proposed Amendments to Regulation. Pursuant to the requirements of the federal Energy Policy Act of 2005, the State Water Control Board is proposing 1) to require secondary containment of all new and replacement underground storage tanks and associated piping within 1000 feet of an existing community water system or other potable drinking water well; 2) to establish criteria for determining what tanks are ineligible for petroleum delivery, the methods for marking the tanks, providing notice to owners/operators and delivery companies that the tanks are ineligible and for developing criteria for reclassifying ineligible tanks as eligible; and (3) to require training for certain classes of underground storage tank operators.

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

Estimated Economic Impact. Pursuant to the requirements of the federal Energy Policy Act of 2005, the State Water Control Board is proposing 1) to require secondary containment of all new and replacement underground storage tanks (UST) and associated piping within 1000 feet of an existing community water system or other potable drinking water well; 2) to establish criteria for determining what tanks are ineligible for petroleum delivery, the methods for marking the tanks, providing notice to owners/operators and delivery companies that the tanks are ineligible and for developing criteria for reclassifying ineligible tanks as eligible; and (3) to require training for certain classes of UST operators. The goal of the amendments is to reduce the number and severity of petroleum leaks from UST systems by strengthening pollution prevention requirements and encouraging UST owners and operators to maintain compliant UST systems.

The proposal to require secondary containment of all new and replacement USTs is expected to add to the costs of operating these tanks. According to the Department of Environmental Quality (DEQ), the price of a 10,000 gallon single walled tank is $11,100 while the price of double walled tank is $17,900. However, the additional costs are believed to be the lowest possible between the two options made available by the Energy Policy Act of 2005. The federal policy requires states to promulgate regulations either to require UST owners and operators to provide secondary containment for new and replacement USTs and piping if the system is within 1,000 feet of any existing community water system or any existing potable drinking water well; or require tank manufacturers and installers to maintain evidence of financial responsibility for releases associated with improper installation or manufacture of tanks. The Energy Act mandates that states choose between requiring secondary containment and requiring tank manufacturers and installer to be financially responsible.

According to DEQ, the board chose secondary containment as in 54 other states and territories because it is the most environmentally protective alternative and preliminary research indicates that the majority of new tanks (66%) and piping (72%) installed today are secondarily contained. The complexities of implementing a financial responsibility program for all UST equipment installed in the state would require significant administrative resources to audit installer and manufacturer financial responsibility requirements and referee litigations. Further, establishing a program for manufacturer and installer financial responsibility may result in an additional burden on the Virginia Petroleum Storage Tank Fund. The Fund currently acts as a financial responsibility mechanism for tank owners and operators in addition to funding petroleum cleanups. Requiring this additional financial responsibility could mean the Fund will be called upon to act as an additional financial responsibility mechanism for manufacturers and installers, as well, potentially resulting in fewer funds available for petroleum cleanups.

The proposed regulations will also establish criteria for determining what tanks are ineligible for petroleum delivery, the methods for marking the tanks, providing notice to owners/operators and delivery companies that the tanks are ineligible and for developing criteria for reclassifying ineligible tanks as eligible. These requirements are expected to strengthen the enforcement of prevention of delivery for problematic USTs.

Finally, the proposed regulations will require training for certain classes of underground storage tank operators. There are three main types of operator classes. Class A for owners, Class B for managers, Class C for cashiers. One person could be certified as all three types of classes. The training of these operators would increase compliance costs in terms of the actual expense of the training classes, the wages associated with the time spent in completing the training, and any room and board expenses if necessary. While there are approximately 6842 facilities in the Commonwealth, it is not known how many individuals would be required to complete training classes.

In addition to reducing the number and severity of petroleum leaks from UST systems by strengthening pollution prevention requirements and encouraging UST owners and operators to maintain compliant UST systems, the proposed

regulations will also satisfy the federal Energy Policy Act requirements to maintain approximately $2.5 million in federal grants.

Businesses and Entities Affected. The proposed regulations apply to approximately 6842 facilities with underground storage tanks.

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

Projected Impact on Employment. The proposed requirements are expected to increase compliance costs of UST operators and may reduce their demand for labor. However, higher UST standards and training requirements are expected to increase demand for labor in other areas. More importantly, the proposed regulations are expected to prevent loss of approximately $2.5 million in federal grant funds and maintain associated demand for labor through this grant.

Effects on the Use and Value of Private Property. The proposed regulations are expected to increase compliance costs of UST facilities and consequently reduce their asset values. To the extent the proposed regulations reduce the frequency and severity of UST leaks, the value of real estate that may have been otherwise adversely affected would be maintained. Also, the asset value of operator training businesses and double walled UST systems are expected to increase.

Small Businesses: Costs and Other Effects. Most of the affected facilities are believed to be small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed alternative is the one that is believed to have the minimum adverse impact on small businesses.

Real Estate Development Costs. The proposed regulations are not expected to have a significant effect on real estate development costs.

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

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

Pursuant to the requirements of the federal Energy Policy Act of 2005, the board is amending the regulation to accomplish the following: (i) require secondary containment of all new and replacement underground storage tanks (USTs) and associated piping within 1,000 feet of an existing community water system (this includes the piping distribution system) or other potable drinking water well; (ii) develop criteria for determining what tanks are ineligible for petroleum delivery, the methods for marking the tanks, providing notice to owners/operators and delivery companies that the tanks are ineligible, and for developing criteria for reclassifying ineligible tanks as eligible; and (iii) require training for certain classes of UST operators. The goal of the amendments is to reduce the number and severity of petroleum leaks from UST systems by strengthening pollution prevention requirements and encouraging UST owners and operators to maintain compliant UST systems. The full text of this new federal legislation can be found at http://www.epa.gov/oust/fedlaws/nrg05_01.htm. This proposal consolidates two Notices of Intended Regulatory Action: Amendment Regarding Operator Training for Owners and Operators (24:14 VA.R. 1887 March 17, 2008) and Incorporation of Requirements of Federal Energy Policy Act of 2005 (23:25 VA.R. 4100 August 20, 2007).

Part I

Definitions, Applicability and Interim Prohibition

9VAC25-580-10. Definitions.

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

"Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of a UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.

"Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

"Below ground release" means any release to the subsurface of the land and to ground water. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

"Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

"Board" means the State Water Control Board.

"Building official" means the executive official of the local government building department empowered by § 36-105 of the Code of Virginia to enforce and administer the Virginia Uniform Statewide Building Code (USBC).

"Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

"Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 USC § 9601 et seq.).

"Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

"Community water system" means a public water system that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

"Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

"Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

"De minimis" means trivial and beyond the intent of regulation, as that term is used at 53 Fed. Reg. 37108-37109.

"Delivery prohibition" is prohibiting the delivery, deposit, or acceptance of product to an underground storage tank system that has been determined to be ineligible by the board for such delivery, deposit, or acceptance.

"Delivery prohibition tag" means a tag, device, or mechanism on the tank's fill pipes that clearly identifies an underground storage tank system as ineligible for product delivery. The tag or device is easily visible to the product deliverer and clearly states and conveys that it is unlawful to deliver to, deposit into, or accept product into the ineligible underground storage tank system. The tag, device, or mechanism is generally tamper resistant.

"Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

"Director" means the director of the Department of Environmental Quality.

"Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

"Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

"Existing community water system or existing potable drinking water well" means a community water system or potable drinking water well is in place when a new installation or replacement of an underground tank, piping, or motor fuel dispensing system begins.

"Existing tank system" means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988. Installation is considered to have commenced if:

1. The owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if

2. a. Either a continuous on-site physical construction or installation program has begun; or

b. The owner or operator has entered into contractual obligations-which cannot be cancelled or modified without substantial loss-for physical construction at the site or installation of the tank system to be completed within a reasonable time.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

"Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

"Free product" refers to a regulated substance that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water).

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

"Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance defined in § 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (42 USC § 9601 et seq.) (but not including any substance regulated as a hazardous waste under subtitle C of RCRA) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

"Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

"Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing product.

"Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine. This definition applies to blended petroleum motor fuels such as biodiesel and ethanol blends that contain more than a de minimis amount of petroleum or petroleum-based substance.

"Motor fuel dispenser system" means the motor fuel dispenser and the equipment necessary to connect the dispenser to the underground storage tank system. The equipment necessary to connect the motor fuel dispenser to the underground storage tank system may include check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are beneath the dispenser and connect the dispenser to the underground piping.

"New tank system" means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988 (See also "existing tank system").

"Noncommercial purposes" with respect to motor fuel means not for resale.

"On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

"Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under Part VII (9VAC25-580-310 et seq.) of this chapter.

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

"Owner" means:

1. In the case of a UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and

2. In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

The term "owner" shall not include any person who, without participating in the management of an underground storage

tank or being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the holder's security interest in the tank.

"Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

"Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Pipe" or "piping" means a hollow cylinder or the tubular conduit that is constructed of nonearthen materials that routinely contains and conveys regulated substances from the underground tank(s) to the dispenser(s) or other end-use equipment. Such piping includes any elbows, couplings, unions, valves, or other in-line fixtures that contain and convey regulated substances from the underground tank(s) to the dispenser(s). Pipe or piping does not include vent, vapor recovery, or fill lines.

"Pipeline facilities (including gathering lines)" are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

"Potable drinking water well" means any hole (dug, driven, drilled, or bored) that extends into the earth until it meets groundwater that supplies water for a noncommunity public water system, or otherwise supplies water for household use (consisting of drinking, bathing, cooking, or other similar uses). Such wells may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities.

"Product deliverer" is any person who delivers or deposits product into an underground storage tank.

"Public water system" means a system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes (i) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system and (ii) any collection or pretreatment storage facilities not under such control that are used primarily in connection with such system. Such term does not include any "special irrigation district." A public water system is either a "community water system" or a "noncommunity water system."

"RCRA" means the federal Resource Conservation and Recovery Act of 1976 as amended (42 USC § 6901 et seq.).

"Regulated substance" means an element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment. The term "regulated substance" includes:

1. Any substance defined in § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 USC § 9601 et seq.), but not any substance regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976 (42 USC § 6901 et seq.); and

2. Petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute). The term "regulated substance" includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an UST into ground water, surface water or subsurface soils.

"Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

"Repair" means to restore a tank or UST system component that has caused a release of product from the UST system.

"Replace" means, when applied to underground storage tanks and piping, to remove an underground storage tank and install a new underground storage tank or to remove and put back greater than 50% of the length of a piping run excluding connectors (such as flexible connectors) connected to an underground storage tank.

"Residential tank" is a tank located on property used primarily for dwelling purposes.

"SARA" means the Superfund Amendments and Reauthorization Act of 1986.

"Secondary containment" means a release prevention and release detection system for an underground tank and/or piping. For purposes of this definition, release prevention means an underground tank and/or piping having an inner and

outer barrier and release detection means a method of monitoring the space between the inner and outer barriers for a leak or release of regulated substances from the underground tank and/or piping.

"Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

"Storm water or waste water collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

"Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

"Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of nonearthen materials (e.g., concrete, steel, plastic) that provide structural support.

"Underdispenser containment" means containment underneath a dispenser that will prevent leaks from the dispenser from reaching soil or groundwater.

"Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

"Underground release" means any belowground release.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground. This term does not include any:

1. Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

2. Tank used for storing heating oil for consumption on the premises where stored;

3. Septic tank;

4. Pipeline facility (including gathering lines) ~~regulated under~~:

a. ~~The~~ Regulated under the Natural Gas Pipeline Safety Act of 1968 (49 USC ~~App.~~ § 1671~~,~~ et seq.);

b. ~~The~~ Regulated under the Hazardous Liquid Pipeline Safety Act of 1979 (49 USC ~~App.~~ § 2001~~,~~ et seq.); or

c. Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in subdivisions 4 a or 4 b of this definition;

5. Surface impoundment, pit, pond, or lagoon;

6. Storm water or wastewater collection system;

7. Flow-through process tank;

8. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

9. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" or "UST" does not include any pipes connected to any tank which is described in subdivisions 1 through 9 of this definition.

"Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of product.

"UST system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

9VAC25-580-20. Applicability.

A. The requirements of this chapter apply to all owners and operators of an UST system as defined in 9VAC25-580-10 except as otherwise provided in subsections B, C, and D of this section. Any UST system listed in subsection C of this section must meet the requirements of 9VAC25-580-30.

B. The following UST systems are excluded from the requirements of this chapter:

1. Any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act (33 USC § 1251 et seq.), or a mixture of such hazardous waste and other regulated substances.

2. Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under § 402 or § 307(b) of the Clean Water Act.

3. Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

4. Any UST system whose capacity is 110 gallons or less.

5. Any UST system that contains a de minimis concentration of regulated substances.

6. Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

C. Deferrals. Parts II, III, IV, V, ~~and~~ VII, and IX of this chapter do not apply to any of the following types of UST systems:

1. Wastewater treatment tank systems;

2. Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 USC § 2011 et seq.);

3. Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR Part 50, Appendix A;

4. Airport hydrant fuel distribution systems; and

5. UST systems with field-constructed tanks.

D. Deferrals. Part IV does not apply to any UST system that was installed before the effective date of the secondary containment requirements in subdivision 7 of 9VAC25-580-50 and stores fuel solely for use by emergency power generators.

Part II
UST Systems: Design, Construction, Installation, and Notification

9VAC25-580-50. Performance standards for new UST systems.

Owners and operators must obtain a permit, the required inspections and a Certificate of Use issued in accordance with the provisions of the Virginia Uniform Statewide Building Code. No UST system shall be installed or placed into use without the owner and operator having obtained the required permit, inspections and Certificate of Use from the building official under the provisions of the Virginia Uniform Statewide Building Code (Chapter 6 (§ 36-97 et seq.) of Title 36 of the Code of Virginia).

In the case of state-owned facilities the Department of General Services shall function as the building official in accordance with § 36-98.1 of the Code of Virginia.

In the case of federal facilities the building official must be contacted. Owners and operators must obtain a permit, the required inspections and a Certificate of Use must be issued in accordance with the provisions of the Virginia Uniform Statewide Building Code.

In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems must meet the following requirements.

1. Tanks.

Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

a. The tank is constructed of fiberglass-reinforced plastic;

NOTE: The following industry codes may be used to comply with subdivision 1 a of this section: Underwriters Laboratories Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products"; Underwriters Laboratories of Canada CAN4-S615-M83, "Standard for Reinforced Plastic Underground Tanks for Petroleum Products"; or American Society of Testing and Materials Standard D4021-86, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks."

b. The tank is constructed of steel and cathodically protected in the following manner:

(1) The tank is coated with a suitable dielectric material;

(2) Field-installed cathodic protection systems are designed by a corrosion expert;

(3) Impressed current systems are designed to allow determination of current operating status as required in subdivision 3 of 9VAC25-580-90; and

(4) Cathodic protection systems are operated and maintained in accordance with 9VAC25-580-90; or

NOTE: The following codes and standards may be used to comply with subdivision 1 b of this section:

(a) Steel Tank Institute "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks";

(b) Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks";

(c) Underwriters Laboratories of Canada CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and CAN4-G03.1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids," and CAN4-S631-M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems"; or

(d) National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on

Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and Underwriters Laboratories Standard 58 "Standard for Steel Underground Tanks for Flammable and Combustible Liquids."

c. The tank is constructed of a steel-fiberglass-reinforced-plastic composite; or

NOTE: The following industry codes may be used to comply with subdivision 1 c of this section: Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks," or the Association for Composite Tanks ACT-100, "Specification for the Fabrication of FRP Clad Underground Storage Tanks."

d. The tank construction and corrosion protection are determined by the board to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than subdivisions 1 a through c of this section.

2. Piping. The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

a. The piping is constructed of fiberglass-reinforced plastic.

NOTE: The following codes and standards may be used to comply with subdivision 2 a of this section:

(1) Underwriters Laboratories Subject 971, "~~UL Listed Non-Metal Pipe~~ Nonmetallic Underground Piping for Flammable Liquids";

(2) Underwriters Laboratories Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas";

(3) Underwriters Laboratories of Canada Guide ULC-107, "Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids"; and

(4) Underwriters Laboratories of Canada Standard CAN 4-S633-M81, "Flexible Underground Hose Connectors."

b. The piping is constructed of steel and cathodically protected in the following manner:

(1) The piping is coated with a suitable dielectric material;

(2) Field-installed cathodic protection systems are designed by a corrosion expert;

(3) Impressed current systems are designed to allow determination of current operating status as required in subdivision 3 of 9VAC25-580-90; and

(4) Cathodic protection systems are operated and maintained in accordance with 9VAC25-580-90; or

NOTE: The following codes and standards may be used to comply with subdivision 2 b of this section:

(a) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";

(b) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage Systems";

(c) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; and

(d) National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems."

c. The piping construction and corrosion protection are determined by the board to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in subdivisions 2 a through b of this section.

3. Spill and overfill prevention equipment.

a. Except as provided in subdivision 3 b of this section, to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following spill and overfill prevention equipment:

(1) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

(2) Overfill prevention equipment that will:

(a) Automatically shut off flow into the tank when the tank is no more than 95% full;

(b) Alert the transfer operator when the tank is no more than 90% full by restricting the flow into the tank or triggering a high-level alarm; or

(c) Restrict the flow 30 minutes prior to overfilling, alert the operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.

b. Owners and operators are not required to use the spill and overfill prevention equipment specified in subdivision 3 a of this section if:

(1) Alternative equipment is used that is determined by the board to be no less protective of human health and the environment than the equipment specified in subdivision 3 a (1) or (2) of this section; or

(2) The UST system is filled by transfers of no more than 25 gallons at one time.

4. Installation. All tanks and piping must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

NOTE: Tank and piping system installation practices and procedures described in the following codes may be used to comply with the requirements of subdivision 4 of this section:

a. American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System";

b. Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or

c. American National Standards Institute Standard B31.3, "Petroleum Refinery Piping," and American National Standards Institute Standard B31.4 "Liquid Petroleum Transportation Piping System."

NOTE: These industry codes require that prior to bringing the system into use the following tests be performed: (i) tank tightness test (air); (ii) pipe tightness test (air or hydrostatic); and (iii) precision system test in accordance with NFPA 329 (detection of .05 gal/hr leak rate).

5. Certification of installation. All owners and operators must ensure that one or more of options a through d of the following methods of certification, testing, or inspection is performed, and a Certificate of Use has been issued in accordance with the provisions of the Virginia Uniform Statewide Building Code to demonstrate compliance with subdivision 4 of this section. A certification of compliance on the UST Notification form must be submitted to the board in accordance with 9VAC25-580-70.

a. The installer has been certified by the tank and piping manufacturers;

b. The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation;

c. All work listed in the manufacturer's installation checklists has been completed; or

d. The owner and operator have complied with another method for ensuring compliance with subdivision 4 of this section that is determined by the board to be no less protective of human health and the environment.

6. Release detection. Release detection shall be provided in accordance with Part IV (9VAC25-580-130 et seq.) of this chapter.

7. Secondary containment.

a. Each new or replaced petroleum underground storage tank, or piping connected to any petroleum underground storage tank, installed within 1,000 feet of any existing community water system or existing potable drinking water well must be secondarily contained in accordance with 9VAC25-580-140 A. In the case of a replacement of a petroleum underground storage tank or the piping connected to the petroleum underground storage tank, the secondary containment requirements shall apply only to the specific petroleum underground storage tank or piping run being replaced, not to other petroleum underground storage tanks and connected pipes comprising such system. The entire piping run must be secondarily contained if more than 50% of the length of a piping run connected to a petroleum underground storage tank is to be replaced.

b. Motor fuel dispenser systems. Each new motor fuel dispenser system installed within 1,000 feet of any existing community water system or existing potable drinking water well shall have underdispenser containment in accordance with 9VAC25-580-140 B. A motor fuel dispenser system is considered new when:

(1) A dispenser is installed at a location where there previously was no dispenser (new UST system or new dispenser location at an existing UST system), or

(2) An existing dispenser is removed and replaced with another dispenser and the equipment used to connect the dispenser to the UST system is replaced. This equipment may include unburied flexible connectors or risers or other transitional components that are beneath the dispenser and connect the dispenser to the piping.

c. If an owner or operator intends to install a new petroleum UST system that is located greater than 1,000 feet from any existing community water system or existing potable drinking water well and the owner or operator will install a potable drinking water well at the new facility that is within 1,000 feet of the petroleum underground storage tanks, piping, or motor fuel dispenser systems as part of the new UST installation, then secondary containment and underdispenser containment are required, regardless of whether the well is installed before or after the petroleum underground storage tanks, piping, and motor fuel dispenser systems are installed.

d. A tank owner or operator who intends to install an UST system or motor fuel dispenser system that will not meet the requirements in subdivision 7 a or c of this subsection must demonstrate to the board that the distance from the proposed new or replacement petroleum underground storage tank or piping or motor fuel dispenser system to the existing community water system or existing potable drinking water well is greater than 1,000 feet.

(1) The tank owner or operator shall make such a demonstration by submitting to the board a map showing the distance from the proposed new or replacement petroleum underground storage tank or piping or motor fuel dispenser system to the existing community water system or existing potable drinking water well. If the distance is greater than 1,000 feet but less than 2,000 feet, the map must be prepared by a licensed professional surveyor. If the distance is greater than 2,000 feet, the map is not required to be prepared by a licensed professional surveyor. The tank owner or operator must submit the map to the board at least 30 days prior to the installation.

(2) The map must delineate the distance from the proposed new or replacement petroleum underground storage tank or piping or motor fuel dispenser system to the closest existing community water system or existing potable drinking water well. The distance must be measured from the closest part of the proposed new or replacement petroleum underground storage tank or piping or motor fuel dispenser system to:

(a) The closest part of the nearest existing community water system including such components as the location of the wellhead(s) for ground water or location of the intake point(s) for surface water, water lines, processing tanks, and water storage tanks; and water distribution or service lines under the control of the community water system operator; and

(b) The wellhead of the nearest existing potable drinking water well.

e. The requirement for secondary containment does not apply to:

(1) Petroleum underground storage tanks that are not new or not replaced in a manifolded UST system;

(2) Piping runs that are not new or not replaced on petroleum underground storage tanks with multiple piping runs;

(3) Suction piping that meets the requirements at 9VAC 25-580-140 C 2 b or piping that manifolds two or more petroleum USTs together;

(4) Repairs meant to restore a petroleum underground storage tank, pipe, or dispenser to operating condition. For purposes of this subsection, a repair is any activity that does not meet the definition of "replace"; and

(5) Other instances approved by the board where equivalent protection is provided.

9VAC25-580-120. Reporting and recordkeeping.

Owners and operators of UST systems must cooperate fully with inspections, monitoring and testing conducted by the board, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to § 9005 of Subtitle I of the Resource Conservation and Recovery Act, as amended.

1. Reporting. Owners and operators must submit the following information to the board:

a. Notification for all UST systems (9VAC25-580-70), which includes certification of installation for new UST systems ~~(9VAC25-580-50 5)~~ (subdivision 5 of 9VAC25-580-50),

b. Reports of all releases including suspected releases (9VAC25-580-190), spills and overfills (9VAC25-580-220), and confirmed releases (9VAC25-580-240);

c. Corrective actions planned or taken including initial abatement measures (9VAC25-580-250), site characterization (9VAC25-580-260), free product removal (9VAC25-580-270), and corrective action plan (9VAC25-580-280); and

d. An amended notification form must be submitted within 30 days after permanent closure or change-in-service (9VAC25-580-320).

2. Recordkeeping. Owners and operators must maintain the following information:

a. Documentation of operation of corrosion protection equipment (9VAC25-580-90);

b. Documentation of UST system repairs ~~(9VAC25-580-110 6)~~ (subdivision 6 of 9VAC25-580-110);

c. Recent compliance with release detection requirements (9VAC25-580-180); and

d. Results of the site investigation conducted at permanent closure (9VAC25-580-350).

e. Documentation of operator training required by 9VAC25-580-125, including verification of training for current Class A, Class B, and Class C operators, and current list of operators and written instructions or procedures for Class C operators in accordance with 9VAC25-580-125 (relating to operator training).

3. Availability and maintenance of records. Owners and operators must keep the records required either:

a. At the UST site and immediately available for inspection by the board; or

b. At a readily available alternative site and be provided for inspection to the board upon request.

In the case of permanent closure records required under 9VAC25-580-350, owners and operators are also provided with the additional alternative of mailing closure records to the board if they cannot be kept at the site or an alternative site as indicated above.

~~Part IV~~
~~Release Detection~~

9VAC25-580-125. Operator training.

A. Definitions.

1. For purposes of this section, "Class A operator" means an operator who has primary responsibility to operate and maintain the underground storage tank system and facility. The Class A operator's responsibilities include managing resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements. In general, Class A operators focus on the broader aspects of the underground storage tank statutory and regulatory requirements and standards necessary to properly operate and maintain the underground storage tank system and facility.

2. For purposes of this section, "Class B operator" means an operator who implements applicable underground storage tank regulatory requirements and standards in the field or at the underground storage tank facility. A Class B operator oversees and implements the day-to-day aspects of operations, maintenance, and recordkeeping for the underground storage tanks at one or more facilities.

3. For purposes of this section, "Class C operator" means the person responsible for responding to alarms or other indications of emergencies caused by spills or releases from underground storage tank systems and equipment failures. A Class C operator, generally, is the first line of response to events indicating emergency conditions.

B. Requirements for trained operators.

1. Owners and operators of UST systems shall designate Class A, Class B, and Class C operators for each UST system or facility that has underground storage tanks.

a. A person may be designated for more than one class of operator.

b. Any person designated for more than one class of operator shall successfully complete the required training under subsection C of this section for each operator class for which he is designated.

c. Persons trained in accordance with subsection C of this section may perform operator duties consistent with their training when employed or contracted by the tank owner or operator to perform these functions.

2. Designated operators shall successfully complete required training under subsection C of this section no later than August 8, 2012.

3. Class A operators shall be familiar with training requirements for each class of operator and may provide required training for Class C operators.

4. Class B operators shall be familiar with Class B and Class C operator responsibilities and may provide training for Class C operators.

5. Trained operators shall be readily available to respond to suspected/confirmed releases, other unusual operating conditions and equipment shut-offs or failures.

a. The Class A or Class B operator shall be available for immediate telephone consultation when an UST facility is in operation. A Class A or Class B operator shall be able to be onsite at the facility within 24 hours.

b. For manned facilities, a Class C operator shall be onsite whenever the UST facility is in operation. After [effective date] written instructions or procedures shall be maintained and visible at manned UST facilities for persons performing duties of the Class C operator to follow and to provide notification necessary in the event of emergency conditions.

c. For unmanned facilities, a Class C operator shall be available for immediate telephone consultation and shall be able to be onsite within two hours of being contacted. Emergency contact information shall be prominently displayed at the site. After [effective date] written instructions or procedures shall be maintained and visible at unmanned UST facilities for persons performing duties of the Class C operator to follow and to provide notification necessary in the event of emergency conditions.

C. Required training.

1. Class A operators shall successfully complete a training course approved by the board that includes a general knowledge of UST system requirements. Training shall provide information that should enable the operator to make informed decisions regarding compliance and ensuring that appropriate persons are fulfilling operation, maintenance, and recordkeeping requirements and standards of this chapter and/or federal underground storage tank requirements in 40 CFR Part 280 (relating to technical standards and corrective action requirements for owners and operators of underground storage tanks (UST)), including, at a minimum, the following:

a. Spill and overfill prevention;

b. Release detection and related reporting requirements;

c. Corrosion protection;

d. Emergency response;

e. Product and equipment compatibility;

f. Financial responsibility;

g. Notification and storage tank registration requirements;

h. Temporary and permanent closure requirements; and

i. Class B and Class C operator training requirements.

2. Class B operators shall successfully complete a training course approved by the board that includes an in-depth understanding of operation and maintenance aspects of UST systems and related regulatory requirements. Training shall provide specific information on the components of UST systems, materials of construction, methods of release detection and release prevention applied to UST systems and components. Training shall address operation and maintenance requirements of this chapter and/or federal underground storage tank requirements in 40 CFR Part 280, including, at a minimum, the following:

a. Spill and overfill prevention;

b. Release detection and related reporting requirements;

c. Corrosion protection and related testing;

d. Emergency response;

e. Product and equipment compatibility;

f. Reporting and recordkeeping requirements; and

g. Class C operator training requirements.

3. Class C operators. At a minimum, training provided by the tank owner or Class A or Class B operator shall enable the Class C operator to take action in response to emergencies caused by spills or releases and alarms from an underground storage tank. Training shall include written instructions or procedures for the Class C operator to follow and to provide notification necessary in the event of emergency conditions.

4. Successful completion for Class A and Class B operators means completion of the entire training course and demonstration of knowledge of the course material as follows:

a. Receipt of a passing grade (a score of 80% or better) on an examination of material presented in the training course, or demonstration through practical (hands-on) application to the trainer of operation and maintenance checks of underground storage tank equipment, including performance of release detection at the UST facility, at the conclusion of onsite training; and

b. Receipt of a training certificate by an approved trainer upon verification of successful completion of training under this section.

5. Reciprocity. The board may also recognize successful completion of Class A and Class B operator training on regulatory standards consistent with 40 CFR Part 280, which is recognized by other state or implementing agencies and which is approved by EPA as meeting operator training grant guidelines published by EPA.

6. The tank owner and operator shall incur the costs of the training.

D. Timing of training.

1. An owner and operator shall ensure that Class A, Class B and Class C operators are trained as soon as practicable after [effective date] contingent upon availability of approved training providers, but not later than August 8, 2012.

2. When a Class A or Class B operator is replaced after August 8, 2012, a new operator shall be trained within 60 days of assuming duties for that class of operator.

3. Class C operators shall be trained before assuming duties of a Class C operator. After [effective date] written instructions or procedures shall be provided to Class C operators to follow and to provide notification necessary in the event of emergency conditions. Class C operators shall be briefed on these instructions or procedures at least annually (every 12 months), which may be concurrent with annual safety training required under Occupational Safety and Health Administration, 29 CFR Part 1910 (relating to Occupational Safety and Health Standards).

E. Retraining.

1. Owners and operators of UST systems shall ensure that Class A and B operators in accordance with subsection C of this section are retrained if the board determines that the UST system is out of compliance with the requirements of 9VAC25-580-30 through 9VAC25-580-190. At a minimum, Class A and Class B operators shall successfully complete retraining in the areas identified as out of compliance.

2. Class A and B operators shall complete training pursuant to this subsection no later than 90 days from the date the board identifies the noncompliance.

F. Documentation.

1. Owners and operators of underground storage tank facilities shall prepare and maintain a list of designated Class A, Class B, and Class C operators. The list shall represent the current Class A, Class B, and Class C operators for the UST facility and shall include:

a. The name of each operator, class of operation trained for, and the date each operator successfully completed initial training and refresher training, if any.

b. For Class A and Class B operators that are not permanently onsite or assigned to more than one facility, telephone numbers to contact the operators.

2. A copy of the certificates of training for Class A and Class B operators shall be on file and readily available and a copy of the facility list of Class A, Class B, and Class C operators and Class C operator instructions or procedures shall be kept onsite and immediately available for manned UST facilities and readily available for unmanned facilities (see subdivision 2 e of 9VAC25-580-120 relating to reporting and recordkeeping).

3. Class C operator and owner contact information, including names and telephone numbers, and any emergency information shall be conspicuously posted at unmanned facilities.

Part IV
Release Detection

9VAC25-580-130. General requirements for all petroleum and hazardous substance UST systems.

A. Owners and operators of new and existing UST systems must provide a method, or combination of methods, of release detection that:

1. Can detect a release from any portion of the tank and the connected underground piping that routinely contains product;

2. Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and

3. Meets the performance requirements in 9VAC25-580-160 or 9VAC25-580-170, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after December 22, 1990, except for methods permanently installed prior to that date, must be capable of detecting the leak rate or quantity specified for that method in ~~subsections~~ subdivisions 2, 3 and 4 of 9VAC25-580-160 or subdivisions 1 and 2 of 9VAC25-580-170 with a probability of detection of 0.95 and a probability of false alarm of 0.05.

B. When a release detection method operated in accordance with the performance standards in 9VAC25-580-160 or 9VAC25-580-170 indicates a release may have occurred, owners and operators must notify the board in accordance with Part V (9VAC25-580-190 et seq.) of this chapter.

C. Owners and operators of all UST systems must comply with the release detection requirements of this part by December 22 of the year listed in the following table:

SCHEDULE FOR PHASE-IN OF RELEASE DETECTION

Year system was installed	Year when release detection is required (by December 22 of the year indicated)				
	1989	1990	1991	1992	1993
Before 1965 or date unknown	RD	P			
1965-1969		P/RD			
1970-1974		P	RD		
1975-1979		P		RD	
1980-1988		P			RD

New tanks (after December 22, 1988) immediately upon installation.

P = Must begin release detection for all pressurized piping in accordance with subdivision C 2 a of 9VAC25-580-140.

RD = Must begin release detection for tanks and suction piping in accordance with ~~subsection~~ subdivisions C 1 and ~~subdivision~~ C 2 b of 9VAC25-580-140, and 9VAC25-580-150.

D. Any existing UST system that cannot apply a method of release detection that complies with the requirements of this part must complete the closure procedures in Part VII (9VAC25-580-310 et seq.) of this chapter by the date on which release detection is required for that UST system under subsection C of this section.

9VAC25-580-140. Requirements for petroleum UST systems.

A. Owners and operators of petroleum UST systems required to have secondary containment under subdivision 7 of 9VAC25-580-50 must provide secondary containment and release detection for tanks and piping as follows:

1. Secondary containment systems must be designed, constructed, and installed to:

a. Contain regulated substances released from the tank system until they are detected and removed;

b. Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

c. Be checked for evidence of a release at least every 30 days.

2. Double-walled tanks must be designed, constructed, and installed to:

a. Contain a release from any portion of the inner tank within the outer wall; and

b. Detect the failure of the inner wall.

3. External liners (including vaults) must be designed, constructed, and installed to:

a. Contain 100% of the capacity of the largest tank within its boundary;

b. Prevent the interference of precipitation or groundwater intrusion with the ability to contain or detect a release of regulated substances; and

c. Surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances).

4. Underground piping must be equipped with secondary containment that satisfies the requirements of subdivision 1 of this subsection (e.g., trench liners, jacketing of double-walled pipe). In addition, underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector in accordance with subdivision 1 of 9VAC25-580-170.

5. Perform interstitial monitoring in accordance with subdivision 7 of 9VAC 25-580-160.

B. Owners and operators of petroleum USTs required to have secondary containment under subdivision 7 of 9VAC25-580-50 must have motor fuel underdispenser containment that is liquid-tight on its sides, bottom, and at any penetrations; be compatible with the substance conveyed by the piping; and allow for visual inspection and access to the components in the containment system or be monitored.

C. Owners and operators of petroleum UST systems not required to have secondary containment under subdivision 7 of 9VAC25-580-50 must provide release detection for tanks and piping as follows:

1. Tanks. Tanks must be monitored at least every 30 days for releases using one of the methods listed in ~~subsections~~ subdivisions 4 through 8 of 9VAC25-580-160 except that:

a. UST systems that meet the performance standards in ~~subsections~~ subdivisions 1 through 5 of 9VAC25-580-50 or ~~subsections~~ subdivisions 1 through 4 of 9VAC25-580-60 may use both monthly inventory control requirements in ~~subsection~~ subdivision 1 or 2 of 9VAC25-580-160, and tank tightness testing (conducted in accordance with ~~subsection~~ subdivision 3 of 9VAC25-580-160 at least every five years until December 22, 1998, or until 10 years after the tank is installed or upgraded under ~~subsection~~ subdivision 2 of 9VAC25-580-60, whichever is later;

b. UST systems that do not meet the performance standards in 9VAC25-580-50 or 9VAC25-580-60 may use monthly inventory controls (conducted in accordance with ~~subsection~~ subdivision 1 or 2 of 9VAC25-580-160) and annual tank tightness testing (conducted in accordance with ~~subsection~~ subdivision 3 of 9VAC25-580-160) until December 22, 1998, when the tank must be upgraded under 9VAC25-580-60 or permanently closed under 9VAC25-580-320; and

c. Tanks with capacity of 550 gallons or less may use weekly tank gauging (conducted in accordance with ~~subsection~~ subdivision 2 of 9VAC25-580-160).

2. Piping. Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one of the following requirements:

a. Pressurized piping. Underground piping that conveys regulated substances under pressure must:

(1) Be equipped with an automatic line leak detector conducted in accordance with subdivision 1 of 9VAC25-580-170; and

(2) Have an annual line tightness test conducted in accordance with subdivision 2 of 9VAC25-580-170 or have monthly monitoring conducted in accordance with subdivision 3 of 9VAC25-580-170.

b. Suction piping. Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every three years and in accordance with subdivision 2 of 9VAC25-580-170, or use a monthly monitoring method conducted in accordance with subdivision 3 of 9VAC25-580-170. No release detection is required for suction piping that is designed and constructed to meet the following standards:

(1) The below-grade piping operates at less than atmospheric pressure;

(2) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

(3) Only one check valve is included in each suction line;

(4) The check valve is located directly below and as close as practical to the suction pump; and

(5) A method is provided that allows compliance with subdivisions 2 b (2) through (4) of this ~~section~~ subsection to be readily determined.

9VAC25-580-370. Requirements for delivery prohibition.

A. No person shall deliver to, deposit into, or accept a petroleum product or other regulated substance into an underground storage tank that has been identified by the board to be ineligible for such delivery, deposit, or acceptance. Unless authorized in writing by the board, no person shall alter, deface, remove, or attempt to remove a tag that prohibits delivery, deposit, or acceptance of a petroleum product or other regulated substance to an underground storage tank.

B. When an inspection or other information provides reason to believe one or more of the following violations exists, the board shall initiate a proceeding in accordance with subsection D of this section:

1. Spill prevention equipment is not installed on the UST system properly as required by 9VAC25-580-50 or 9VAC25-580-60 or is disabled;

2. Overfill protection equipment is not installed on the UST system properly as required by 9VAC25-580-50 or 9VAC25-580-60 or is disabled;

3. Release detection equipment is not installed on the UST system properly or is disabled or a release detection method is not being performed as required by 9VAC25-580-50 or 9VAC25-580-60;

4. Corrosion protection equipment is not installed on the UST system properly as required by 9VAC25-580-50 or 9VAC25-580-60 or is disabled;

5. Secondary containment is not installed on the UST system properly as required by 9VAC25-580-50, 9VAC25-580-60, or 9VAC25-580-150 or is disabled; or

6. The board has reason to believe that an UST system is leaking and the owner or operator has failed to initiate and complete the investigation and confirmation requirements of 9VAC25-580-190 through 9VAC25-580-210.

C. For purposes of subsection B of this section, spill prevention, overfill prevention, corrosion protection, release detection, or secondary containment equipment that is not verifiable as installed is not installed.

D. The board shall provide written notice to the owner and operator pursuant to subdivision G 1 of this section that it will conduct an informal fact finding pursuant to § 2.2-4019 of the Code of Virginia to determine whether the underground storage tank(s) shall be ineligible for delivery, deposit, or acceptance of a petroleum product or other regulated substance. The fact finding shall be scheduled as soon as practicable after the notice, and within 10 business days in any event. Upon a finding to impose delivery prohibition, the board shall affix a tag to the fill pipe of the underground storage tank(s) prohibiting delivery, deposit, or acceptance of a petroleum product or other regulated substance.

E. When the board issues a notice of alleged violation based on an inspection or other information that provides reason to believe a UST system is not in compliance with the requirements of Part II, III, or IV of this chapter not listed in subsection B of this section, the requirements of 9VAC25-580-240 through 9VAC25-580-280, or the requirements of 9VAC25-590 (Petroleum Underground Storage Tank Financial Responsibility Requirements), and the owner or operator fails to comply with the notice of alleged violation within the time prescribed by the board, the board may proceed in accordance with subsection D of this section.

F. The board may classify all underground storage tanks containing petroleum or any other regulated substance at a facility as ineligible for delivery, deposit, or acceptance of a petroleum product or other regulated substance if one or more underground storage tanks at the facility has been classified as ineligible for more than 90 days and the ineligible underground storage tank(s) has neither been closed in accordance with 9VAC25-580-310 or 9VAC25-580-320 nor returned to compliance. The board shall provide written notice to the owner and operator pursuant to subdivision G 1 of this section that it will conduct an informal fact finding pursuant to § 2.2-4019 of the Code of Virginia to determine whether all the underground storage tanks shall be ineligible for delivery, deposit, or acceptance of a petroleum product or other regulated substance. The fact finding shall be scheduled as soon as practicable after the notice, and within 10 business days in any event.

G. Notice.

1. The board shall provide written notice of an informal fact finding to consider delivery prohibition to the owner and operator. The notice shall meet the requirements of § 2.2-4019 of the Code of Virginia. The notice shall further advise the owner and operator of the possibility of a special order pursuant to subsection I of this section.

2. The presence of the delivery prohibition tag on the fill pipe of an ineligible underground storage tank shall be sufficient notice to any person, including the owner, the operator, and product deliverers, that the underground storage tank is ineligible for delivery or deposit. The board may use other methods in addition to the delivery prohibition tag to provide notice to product deliverers.

H. An owner or operator shall notify the board in writing once an ineligible underground storage tank has been returned to compliance and provide a written report detailing all actions that have been taken to return the UST system to compliance, as well as supporting evidence such as test reports, invoices, receipts, inventory records, etc. As soon as practicable after confirming that the underground storage tank

is in compliance with the requirements of this chapter or 9VAC25-590, or both, but in no event later than two business days, the board shall remove or authorize the owner or operator, in writing, to remove the delivery prohibition tag.

I. If the board determines that a violation exists that warrants the imposition of delivery prohibition, the board may further consider whether the threat posed by the violation is outweighed by the need for fuel from the underground storage tank(s) in question to meet an emergency situation or the need for availability of or access to motor fuel in any rural and remote area. If the board finds that such a condition outweighs the immediate risk of the violation, the board may defer imposition of delivery prohibition for up to 180 days. In every such case the director shall consider (i) issuing a special order under the authority of subdivision 10 of § 10.1-1186 of the Code of Virginia prescribing a prompt schedule for abating the violation and (ii) imposing a civil penalty.

J. The board may temporarily authorize an owner or operator to accept delivery into an ineligible underground storage tank(s) if such activity is necessary to test or calibrate the underground storage tank(s) or dispenser system.

K. Nothing in this section shall prevent the board or the director from exercising any other enforcement authority including, without limitation, their authority to issue emergency orders and their authority to seek injunctive relief.

VA.R. Doc. Nos. R07-749 and R08-1196; Filed October 21, 2009, 11:20 a.m.

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TITLE 13. HOUSING

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

Proposed Regulation

REGISTRAR'S NOTICE: The Virginia Housing Development Authority is exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) pursuant to § 2.2-4002 A 4; however, under the provisions of § 2.2-4031, it is required to publish all proposed and final regulations.

Title of Regulation: **13VAC10-180. Rules and Regulations for Allocation of Low-Income Housing Tax Credits (amending 13VAC10-180-60; repealing 13VAC10-180-80).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Public Hearing Information:

November 17, 2009 - Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA

Public Comment Deadline: November 17, 2009.

Agency Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 343-5540 or email judson.mckellar@vhda.com.

Summary:

The proposed amendments (i) add a source of financing to the subsidized funding category, (ii) add a negative point category to discourage construction of new rental space in areas anticipated to have little or no increase in rent-burdened households, (iii) add a point category to encourage new rental space in urban development growth areas or zoned areas with an affordable dwelling unit bonus, (iv) revise the amenity category for high efficiency heat pumps and gas furnaces, (v) add a point amenity category for geothermal heat pump systems, (vi) add a point amenity category for solar electric systems, (vii) revise the point category for units for persons with disabilities with federal project-based subsidy, (viii) delete the point category for a LEED-certified design team member, (ix) suspend the preservation pool for credit year 2010, and (x) make other miscellaneous administrative clarification changes.

13VAC10-180-60. Review and selection of applications; reservation of credits.

The executive director may divide the amount of credits into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, occupants, or source of credits; or any other factors deemed appropriate by him to best meet the housing needs of the Commonwealth.

An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual state housing credit ceiling for credits, shall be available for reservation and allocation to buildings or developments with respect to which the following requirements are met:

1. A "qualified nonprofit organization" (as described in § 42(h)(5)(C) of the IRC) which is authorized to do business in Virginia and is determined by the executive director, on the basis of such relevant factors as he shall consider appropriate, to be substantially based or active in the community of the development and is to materially participate (regular, continuous and substantial involvement as determined by the executive director) in the development and operation of the development throughout the "compliance period" (as defined in § 42(i)(1) of the IRC); and

2. (i) The "qualified nonprofit organization" described in the preceding subdivision 1 is to own (directly or through a partnership), prior to the reservation of credits to the buildings or development, all of the general partnership interests of the ownership entity thereof; (ii) the executive director of the authority shall have determined that such

qualified nonprofit organization is not affiliated with or controlled by a for-profit organization; (iii) the executive director of the authority shall have determined that the qualified nonprofit organization was not formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools (as defined below) established by the executive director, and (iv) the executive director of the authority shall have determined that no staff member, officer or member of the board of directors of such qualified nonprofit organization will materially participate, directly or indirectly, in the proposed development as a for-profit entity.

In making the determinations required by the preceding subdivision 1 and clauses (ii), (iii) and (iv) of subdivision 2 of this section, the executive director may apply such factors as he deems relevant, including, without limitation, the past experience and anticipated future activities of the qualified nonprofit organization, the sources and manner of funding of the qualified nonprofit organization, the date of formation and expected life of the qualified nonprofit organization, the number of paid staff members and volunteers of the qualified nonprofit organization, the nature and extent of the qualified nonprofit organization's proposed involvement in the construction or rehabilitation and the operation of the proposed development, the relationship of the staff, directors or other principals involved in the formation or operation of the qualified nonprofit organization with any persons or entities to be involved in the proposed development on a for-profit basis, and the proposed involvement in the construction or rehabilitation and operation of the proposed development by any persons or entities involved in the proposed development on a for-profit basis. The executive director may include in the application of the foregoing factors any other nonprofit organizations which, in his determination, are related (by shared directors, staff or otherwise) to the qualified nonprofit organization for which such determination is to be made.

For purposes of the foregoing requirements, a qualified nonprofit organization shall be treated as satisfying such requirements if any qualified corporation (as defined in § 42(h)(5)(D)(ii) of the IRC) in which such organization (by itself or in combination with one or more qualified nonprofit organizations) holds 100% of the stock satisfies such requirements.

The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the foregoing requirements have been satisfied. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling for credits be available for developments other than those satisfying the preceding requirements. The executive director may establish such pools (nonprofit pools) of credits as he may deem appropriate to satisfy the foregoing requirement. If any such nonprofit pools are so established, the executive director may rank the applications therein and reserve credits to such applications before ranking applications and reserving credits in other pools, and any such applications in such nonprofit pools not receiving any reservations of credits or receiving such reservations in amounts less than the full amount permissible hereunder (because there are not enough credits then available in such nonprofit pools to make such reservations) shall be assigned to such other pool as shall be appropriate hereunder; provided, however, that if credits are later made available (pursuant to the IRC or as a result of either a termination or reduction of a reservation of credits made from any nonprofit pools or a rescission in whole or in part of an allocation of credits made from such nonprofit pools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools have been so assigned to other pools as described above, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools (or for any other pools as he shall determine) and may, if additional credits have been so designated for the nonprofit pools, reassign such applications to such nonprofit pools, rank the applications therein and reserve credits to such applications in accordance with the IRC and this chapter. In the event that during any round (as authorized hereinbelow) of application review and ranking the amount of credits reserved within such nonprofit pools is less than the total amount of credits made available therein, the executive director may either (i) leave such unreserved credits in such nonprofit pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute, to the extent permissible under the IRC, such unreserved credits to such other pool or pools as the executive director shall designate reservations therefore in the full amount permissible hereunder (which applications shall hereinafter be referred to as "excess qualified applications") or (iii) carry over such unreserved credits to the next succeeding calendar year for the inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year. Notwithstanding anything to the contrary herein, no reservation of credits shall be made from any nonprofit pools to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or any combination of pools may receive a reservation or allocation of annual credits in an amount greater than $750,000 unless credits remain available in such nonprofit pools after all eligible applications for credits from such nonprofit pools receive a reservation of credits.

Notwithstanding anything to the contrary herein, applicants relying on the experience of a local housing authority for developer experience points described hereinbelow and/or using Hope VI funds from HUD in connection with the

proposed development shall not be eligible to receive a reservation of credits from any nonprofit pools.

The authority shall review each application, and, based on the application and other information available to the authority, shall assign points to each application as follows:

1. Readiness.

a. Written evidence satisfactory to the authority of unconditional approval by local authorities of the plan of development or site plan for the proposed development or that such approval is not required. (40 points; applicants receiving points under this subdivision 1 a are not eligible for points under subdivision 5 a below)

b. Written evidence satisfactory to the authority (i) of proper zoning or special use permit for such site or (ii) that no zoning requirements or special use permits are applicable. (40 points)

2. Housing needs characteristics.

a. Submission of the form prescribed by the authority with any required attachments, providing such information necessary for the authority to send a letter addressed to the current chief executive officer (or the equivalent) of the locality in which the proposed development is located, soliciting input on the proposed development from the locality within the deadlines established by the executive director. (minus 50 points for failure to make timely submission)

b. (1) A letter dated within three months prior to the application deadline addressed to the authority and signed by the chief executive officer of the locality in which the proposed development is to be located stating, without qualification or limitation, the following:

"The construction or rehabilitation of (name of development) and the allocation of federal housing tax credits available under IRC Section 42 for that development will help meet the housing needs and priorities of (name of locality). Accordingly, (name of locality) supports the allocation of federal housing tax credits requested by (name of applicant) for that development." (50 points)

(2) No letter from the chief executive officer of the locality in which the proposed development is to be located, or a letter addressed to the authority and signed by such chief executive officer stating neither support (as described in subdivision b (1) above) nor opposition (as described in subdivision b (3) below) as to the allocation of credits to the applicant for the development. (25 points)

(3) A letter in response to its notification to the chief executive officer of the locality in which the proposed development is to be located opposing the allocation of credits to the applicant for the development. In any such letter, the chief executive officer must certify that the proposed development is not consistent with current zoning or other applicable land use regulations. (0 points)

c. Documentation in a form approved by the authority from the chief executive officer (or the equivalent) of the local jurisdiction in which the development is to be located (including the certification described in the definition of revitalization area in 13VAC10-180-10) that the area in which the proposed development is to be located is a revitalization area and the proposed development is an integral part of the local government's plan for revitalization of the area. (30 points)

d. If the proposed development is located in a qualified census tract as defined in § 42(d)(5)(C)(ii) of the IRC and is in a revitalization area. (5 points)

e. Commitment by the applicant to give leasing preference to individuals and families (i) on public housing waiting lists maintained by the local housing authority operating in the locality in which the proposed development is to be located and notification of the availability of such units to the local housing authority by the applicant or (ii) on section 8 (as defined in 13VAC10-180-90) waiting lists maintained by the local or nearest section 8 administrator for the locality in which the proposed development is to be located and notification of the availability of such units to the local section 8 administrator by the applicant. (10 points; Applicants receiving points under this subdivision may not require an annual minimum income requirement for prospective tenants that exceeds the greater of $3,600 or 2.5 times the portion of rent to be paid by such tenants.)

f. Any of the following: (i) firm financing commitment(s) from the local government, local housing authority, Federal Home Loan Bank affordable housing funds, Commonwealth of Virginia Department of Behavioral Health and Development Services funds from Item 315-Z of the 2008-2010 Appropriation Act, or the Rural Development for a below-market rate loan or grant or Rural Development's interest credit used to reduce the interest rate on the loan financing the proposed development; (ii) a resolution passed by the locality in which the proposed development is to be located committing such financial support to the development in a form approved by the authority; or (iii) a commitment to donate land, buildings or waive tap fee waivers from the local government. (The amount of such financing or dollar value of local support will be divided by the total development sources of funds and the proposed development receives two points for each percentage point up to a maximum of 40 points.)

g. Any development subject to (i) HUD's Section 8 or Section 236 programs or (ii) Rural Development's 515

program, at the time of application. (20 points, unless the applicant is, or has any common interests with, the current owner, directly or indirectly, the application will only qualify for these points if the applicant waives all rights to any developer's fee and any other fees associated with the acquisition and rehabilitation (or rehabilitation only) of the development unless permitted by the executive director for good cause.)

h. Any development receiving (i) a real estate tax abatement on the increase in the value of the development or (ii) new project-based subsidy from HUD or Rural Development for the greater of 5 units or 10% of the units of the proposed development. (10 points)

i. Any proposed development located in a census tract that has less than a 10% poverty rate (based upon Census Bureau data) with no other tax credit units in such census tract. (25 points)

j. Any proposed development listed in the top 25 developments identified by Rural Development as high priority for rehabilitation at the time the application is submitted to the authority. (15 points)

k. Any proposed new construction development (including adaptive re-use and rehabilitation that creates additional rental space) located in a pool identified by the authority as a pool with little or no increase in rent-burdened population. (up to minus 20 points, depending upon the portion of the development that is additional rental space, in all pools except the at-large pool, 0 points in the at-large pool. The executive director may make exceptions in the following circumstances:

(1) Specialized types of housing designed to meet special needs that cannot readily be addressed utilizing existing residential structures;

(2) Housing designed to serve as a replacement for housing being demolished through redevelopment; or

(3) Housing that is an integral part of a neighborhood revitalization project sponsored by a local housing authority.)

l. Any proposed new construction development (including adaptive re-use and rehabilitation that creates additional rental space) that is located in a pool identified by the authority as a pool with an increasing rent-burdened population and is also in an urban development area as defined in § 15.2-2223.1 of the Code of Virginia or participating in a locally adopted affordable housing dwelling unit program as described in either § 15.2-2304 or 15.2-2305 of the Code of Virginia. (up to 20 points, depending upon the portion of the development that is additional rental space, in all pools except the at-large pool, 0 points in the at-large pool)

3. Development characteristics.

a. The average unit size. (100 points multiplied by the sum of the products calculated by multiplying, for each unit type as defined by the number of bedrooms per unit, (i) the quotient of the number of units of a given unit type divided by the total number of units in the proposed development, times (ii) the quotient of the average actual gross square footage per unit for a given unit type minus the lowest gross square footage per unit for a given unit type established by the executive director divided by the highest gross square footage per unit for a given unit type established by the executive director minus the lowest gross square footage per unit for a given unit type established by the executive director. If the average actual gross square footage per unit for a given unit type is less than the lowest gross square footage per unit for a given unit type established by the executive director or greater than the highest gross square footage per unit for a given unit type established by the executive director, the lowest or highest, as the case may be, gross square footage per unit for a given unit type established by the executive director shall be used in the above calculation rather than the actual gross square footage per unit for a given unit type.)

b. Evidence satisfactory to the authority documenting the quality of the proposed development's amenities as determined by the following:

(1) The following points are available for any application:

(a) If 2-bedroom units have 1.5 bathrooms and 3-bedroom units have 2 bathrooms. (15 points multiplied by the percentage of units meeting these requirements)

(b) If a community/meeting room with a minimum of 749 square feet is provided. (5 points)

(c) Brick covering 30% or more of the exterior walls. (20 points times the percentage of exterior walls covered by brick)

(d) If all kitchen and laundry appliances meet the EPA's Energy Star qualified program requirements. (5 points)

(e) If all the windows meet the EPA's Energy Star qualified program requirements. (5 points)

(f) If every unit in the development is heated and ~~air conditioned~~ cooled with either (i) heat pump ~~units~~ equipment with both a SEER rating of ~~14.0~~ 15.0 or more and a HSPF rating of ~~8.2~~ 8.5 or more ~~and a variable speed air handling unit or thru-the-wall heat pump equipment that has an EER rating of 11.0 or more~~ or (ii) air conditioning ~~units~~ equipment with a SEER rating of ~~14.0~~ 15.0 or more ~~and a variable speed air handling unit~~, combined with a gas furnace with an AFUE rating of 90% or more. (10 points)

(g) If the water expense is submetered (the tenant will pay monthly or bimonthly bill). (5 points)

(h) If each bathroom contains only low-flow faucets and showerheads as defined by the authority. (3 points)

(i) If each unit is provided with the necessary infrastructure for high-speed cable, DSL or wireless Internet service. (1 point)

(j) ~~Beginning January 1, 2009, if~~ If all the water heaters meet the EPA's Energy Star qualified program requirements. (5 points)

(k) If every unit in the development is heated and cooled with a geothermal heat pump that meets the EPA's Energy Star qualified program requirements. (5 points)

(l) If the development has a solar electric system that will remain unshaded year-round, be oriented to within 15 degrees of true south, and be angled horizontally within 15 degrees of latitude. (1 point for each 2.0% of the development's electrical load that can be met by the solar electric system, up to 5 points)

(2) The following points are available to applications electing to serve elderly and/or physically disabled tenants:

(a) If all cooking ranges have front controls. (1 point)

(b) If all units have an emergency call system. (3 points)

(c) If all bathrooms have an independent or supplemental heat source. (1 point)

(d) If all entrance doors to each unit have two eye viewers, one at 48 inches and the other at standard height. (1 point)

(3) If the structure is historic, by virtue of being listed individually in the National Register of Historic Places, or due to its location in a registered historic district and certified by the Secretary of the Interior as being of historical significance to the district, and the rehabilitation will be completed in such a manner as to be eligible for historic rehabilitation tax credits. (5 points)

The maximum number of points that may be awarded under any combination of the scoring categories under subdivision 3 b of this section is ~~60~~ 70 points.

c. Any nonelderly development in which (i) the greater of 5 units or 10% of the units ~~(i) provide~~ will be subject to federal project-based rent subsidies or equivalent assistance in order to ensure occupancy by extremely low-income persons; and (ii) the greater of 5 units or 10% of the units will conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act~~;~~ and ~~(iii) are~~ be actively marketed to people with special needs in accordance with a plan submitted as part of the application for credits ~~(if special needs includes mobility impairments~~ (all the units described in (ii) above must include roll-in showers and roll-under sinks and ~~ranges)~~ ranges, unless agreed to by the authority prior to the applicant's submission of its application). (50 points)

d. Any nonelderly development in which the greater of 5 units or 10% of the units (i) have rents within HUD's Housing Choice Voucher (HCV) payment standard; (ii) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; and (iii) are actively marketed to people with mobility impairments including HCV holders in accordance with a plan submitted as part of the application for credits. (30 points)

e. Any nonelderly development in which 4.0% of the units (i) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act and (ii) are actively marketed to people with mobility impairments in accordance with a plan submitted as part of the application for credits. (15 points)

f. Any development located within one-half mile of an existing commuter rail, light rail or subway station or one-quarter mile of one or more existing public bus stops. (10 points, unless the development is located within the geographical area established by the executive director for a pool of credits for northern Virginia, in which case, the development will receive 20 points if the development is ranked against other developments in such northern Virginia pool, 10 points if the development is ranked against other developments in any other pool of credits established by the executive director)

g. Any development for which the applicant agrees to obtain either (i) EarthCraft certification or (ii) US Green Building Council LEED green-building certification prior to the issuance of an IRS Form 8609 with the proposed development's architect certifying in the application that the development's design will meet the criteria for such certification, provided that the proposed development's architect is on the Authority's list of LEED/EarthCraft certified architects. The executive director may, if needed, designate a proposed development as requiring an increase in credit in order to be financially feasible and such development shall be treated as if in a difficult development area as provided in the IRC for any applicant receiving points under this subdivision and 60 points under either subdivision 7 a or b of this section, provided however, any resulting increase in such development's eligible basis shall be limited to 5.0% of the development's eligible basis. (30 points)

h. Any development for which the applicant agrees to use an authority-certified property manager to manage the development. (25 points)

i. If units are constructed to meet the authority's universal design standards, provided that the proposed development's architect is on the Authority's list of universal design certified architects. (15 points, if all the units in an elderly development meet this requirement; 15 points multiplied by the percentage of units meeting this requirement for nonelderly developments)

j. Any development in which the applicant proposes to produce less than 100 low-income housing units. (20 points for producing 50 low-income housing units or less, minus.4 points for each additional low-income housing unit produced down to 0 points for any development that produces 100 or more low-income housing units.)

4. Tenant population characteristics. Commitment by the applicant to give a leasing preference to individuals and families with children in developments that will have no more than 20% of its units with one bedroom or less. (15 points; plus 0.75 points for each percent of the low-income units in the development with three or more bedrooms up to an additional 15 points for a total of no more than 30 points)

5. Sponsor characteristics.

a. Evidence that the principal or principals, as a group or individually, for the proposed development have developed, as controlling general partner or managing member, (i) at least three tax credit developments that contain at least three times the number of housing units in the proposed development or (ii) at least six tax credit developments that contain at least the number of housing units in the proposed development. (50 points; applicants receiving points under this subdivision 5 a are not eligible for points under subdivision 1 a above)

b. Evidence that the principal or principals for the proposed development have developed at least one tax credit development that contains at least the number of housing units in the proposed development. (10 points)

c. Any applicant that includes a principal that was a principal in a development at the time the authority reported such development to the IRS for an uncorrected life-threatening hazard under HUD's Uniform Physical Condition Standards. (minus 50 points for a period of three years after the violation has been corrected)

d. Any applicant that includes a principal that was a principal in a development that either (i) at the time the authority reported such development to the IRS for noncompliance ~~that has not been~~ had not corrected such noncompliance by the time a Form 8823 ~~is~~ was filed by the authority or (ii) remained out-of-compliance with the terms of its extended use commitment after notice and expiration of any cure period set by the authority. (minus 15 points for a period of three years after the time the authority filed Form 8823 or expiration of such cure period, unless the executive director determines that such principal's attempts to correct such noncompliance was prohibited by a court, local government or governmental agency, in which case, no negative points will be assessed to the applicant)

e. Any applicant that includes a principal that is or was a principal in a development that (i) did not build a development as represented in the application for credit (minus two times the number of points assigned to the item or items not built or minus 20 points for failing to provide a minimum building requirement, for a period of three years after the last Form 8609 is issued for the development, in addition to any other penalties the authority may seek under its agreements with the applicant), or (ii) has a reservation of credits terminated by the authority (minus 10 points a period of three years after the credits are returned to the authority).

f. Any applicant that includes a management company in its application that is rated unsatisfactory by the executive director or if the ownership of any applicant includes a principal that is or was a principal in a development that hired a management company to manage a tax credit development after such management company received a rating of unsatisfactory from the executive director during the compliance period and extended use period of such development. (minus 25 points)

~~g. Evidence that a US Green Building Council LEED certified design professional participated in the design of the proposed development. (10 points)~~

6. Efficient use of resources.

a. The percentage by which the total of the amount of credits per low-income housing unit (the "per unit credit amount") of the proposed development is less than the standard per unit credit amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (180 points multiplied by the percentage by which the total amount of the per unit credit amount of the proposed development is less than the applicable standard per unit credit amount established by the executive director, negative points will be assessed using the percentage by which the total amount of the per unit credit amount of the proposed development exceeds the applicable standard per unit credit amount established by the executive director.)

b. The percentage by which the cost per low-income housing unit (the "per unit cost"), adjusted by the authority for location, of the proposed development is less than the standard per unit cost amounts established by the executive director for a given unit type, based

upon the number of such unit types in the proposed development. (75 points multiplied by the percentage by which the total amount of the per unit cost of the proposed development is less than the applicable standard per unit cost amount established by the executive director.)

The executive director may use a standard per square foot credit amount and a standard per square foot cost amount in establishing the per unit credit amount and the per unit cost amount in subdivision 6 above. For the purpose of calculating the points to be assigned pursuant to such subdivision 6 above, all credit amounts shall include any credits previously allocated to the development, and the per unit credit amount for any building documented by the applicant to be located in both a revitalization area and either (i) a qualified census tract or (ii) difficult development area (such tract or area being as defined in the IRC) shall be determined based upon 100% of the eligible basis of such building, in the case of new construction, or 100% of the rehabilitation expenditures, in the case of rehabilitation of an existing building, notwithstanding any use by the applicant of 130% of such eligible basis or rehabilitation expenditures in determining the amount of credits as provided in the IRC.

7. Bonus points.

a. Commitment by the applicant to impose income limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision a may not receive points under subdivision b below. (The product of (i) 50 points multiplied by (ii) the percentage of housing units in the proposed development both rent restricted to and occupied by households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)

b. Commitment by the applicant to impose rent limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision b may not receive points under subdivision a above. (The product of (i) 25 points (50 points for proposed developments in low-income jurisdictions) multiplied by (ii) the percentage of housing units in the proposed development rent restricted to households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)

c. Commitment by the applicant to maintain the low-income housing units in the development as a qualified low-income housing development beyond the 30-year extended use period (as defined in the IRC). Applicants receiving points under this subdivision c may not receive bonus points under subdivision d below. (40 points for a 10-year commitment beyond the 30-year extended use period or 50 points for a 20-year commitment beyond the 30-year extended use period.)

d. Participation by a local housing authority or qualified nonprofit organization (substantially based or active in the community with at least a 10% ownership interest in the general partnership interest of the partnership) and a commitment by the applicant to sell the proposed development pursuant to an executed, recordable option or right of first refusal to such local housing authority or qualified nonprofit organization or to a wholly owned subsidiary of such organization or authority, at the end of the 15-year compliance period, as defined by IRC, for a price not to exceed the outstanding debt and exit taxes of the for-profit entity. The applicant must record such option or right of first refusal immediately after the low-income housing commitment described in 13VAC10-180-70 ~~and give the qualified nonprofit veto power over any refinancing of the development~~. Applicants receiving points under this subdivision d may not receive bonus points under subdivision c above. (60 points; plus 5 points if the local housing authority or qualified nonprofit organization submits a homeownership plan satisfactory to the authority in which the local housing authority or qualified nonprofit organization commits to sell the units in the development to tenants.)

In calculating the points for subdivisions 7 a and b above, any units in the proposed development required by the locality to exceed 60% of the area median gross income will not be considered when calculating the percentage of low-income units of the proposed development with incomes below those required by the IRC in order for the development to be a qualified low-income development, provided that the locality submits evidence satisfactory to the authority of such requirement.

After points have been assigned to each application in the manner described above, the executive director shall compute the total number of points assigned to each such application. Any application that is assigned a total number of points less than a threshold amount of ~~450 points for calendar year 2008, and~~ 500 points ~~after January 1, 2009 (425~~ (475 points for developments financed with tax-exempt bonds in such amount so as not to require under the IRC an allocation of credits hereunder ~~for calendar year 2008, and 475 points for~~

~~such developments after January 1, 2009),~~) shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

During its review of the submitted applications, the authority may conduct its own analysis of the demand for the housing units to be produced by each applicant's proposed development. Notwithstanding any conclusion in the market study submitted with an application, if the authority determines that, based upon information from its own loan portfolio or its own market study, inadequate demand exists for the housing units to be produced by an applicant's proposed development, the authority may exclude and disregard the application for such proposed development.

The executive director may exclude and disregard any application which he determines is not submitted in good faith or which he determines would not be financially feasible.

Upon assignment of points to all of the applications, the executive director shall rank the applications based on the number of points so assigned. If any pools shall have been established, each application shall be assigned to a pool and, if any, to the appropriate tier within such pool and shall be ranked within such pool or tier, if any. The amount of credits made available to each pool will be determined by the executive director. Available credits will include unreserved per capita dollar amount credits from the current calendar year under § 42(h)(3)(C)(i) of the IRC, any unreserved per capita credits from previous calendar years, and credits returned to the authority prior to the final ranking of the applications and may include up to 10% of next calendar year's per capita credits as shall be determined by the executive director. Those applications assigned more points shall be ranked higher than those applications assigned fewer points. However, if any set-asides established by the executive director cannot be satisfied after ranking the applications based on the number of points, the executive director may rank as many applications as necessary to meet the requirements of such set-aside (selecting the highest ranked application, or applications, meeting the requirements of the set-aside) over applications with more points.

In the event of a tie in the number of points assigned to two or more applications within the same pool, or, if none, within the Commonwealth, and in the event that the amount of credits available for reservation to such applications is determined by the executive director to be insufficient for the financial feasibility of all of the developments described therein, the authority shall, to the extent necessary to fully utilize the amount of credits available for reservation within such pool or, if none, within the Commonwealth, select one or more of the applications with the highest combination of points from subdivision 7 above, and each application so selected shall receive (in order based upon the number of such points, beginning with the application with the highest number of such points) a reservation of credits. If two or more of the tied applications receive the same number of points from subdivision 7 above and if the amount of credits available for reservation to such tied applications is determined by the executive director to be insufficient for the financial feasibility of all the developments described therein, the executive director shall select one or more of such applications by lot, and each application so selected by lot shall receive (in order of such selection by lot) a reservation of credits.

For each application which may receive a reservation of credits, the executive director shall determine the amount, as of the date of the deadline for submission of applications for reservation of credits, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC. In making this determination, the executive director shall consider the sources and uses of the funds, the available federal, state and local subsidies committed to the development, the total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development, and the percentage of the credit dollar amount used for development costs other than the costs of intermediaries. He shall also examine the development's costs, including developer's fees and other amounts in the application, for reasonableness and, if he determines that such costs or other amounts are unreasonably high, he shall reduce them to amounts that he determines to be reasonable. The executive director shall review the applicant's projected rental income, operating expenses and debt service for the credit period. The executive director may establish such criteria and assumptions as he shall deem reasonable for the purpose of making such determination, including, without limitation, criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development), increases in the market value of the development, and increases in operating expenses, rental income and, in the case of applications without firm financing commitments (as defined hereinabove) at fixed interest rates, debt service on the proposed mortgage loan. The executive director may, if he deems it appropriate, consider the development to be a part of a larger development. In such a case, the executive director may consider, examine, review and establish any or all of the foregoing items as to the larger development in making such determination for the development.

At such time or times during each calendar year as the executive director shall designate, the executive director shall reserve credits to applications in descending order of ranking within each pool and tier, if applicable, until either

substantially all credits therein are reserved or all qualified applications therein have received reservations. (For the purpose of the preceding sentence, if there is not more than a de minimis amount, as determined by the executive director, of credits remaining in a pool after reservations have been made, "substantially all" of the credits in such pool shall be deemed to have been reserved.) The executive director may rank the applications within pools at different times for different pools and may reserve credits, based on such rankings, one or more times with respect to each pool. The executive director may also establish more than one round of review and ranking of applications and reservation of credits based on such rankings, and he shall designate the amount of credits to be made available for reservation within each pool during each such round. The amount reserved to each such application shall be equal to the lesser of (i) the amount requested in the application or (ii) an amount determined by the executive director, as of the date of application, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC; provided, however, that in no event shall the amount of credits so reserved exceed the maximum amount permissible under the IRC.

Not more than 20% of the credits in any pool may be reserved to developments intended to provide elderly housing, unless the feasible credit amount, as determined by the executive director, of the highest ranked elderly housing development in any pool exceeds 20% of the credits in such pool, then such elderly housing development shall be the only elderly housing development eligible for a reservation of credits from such pool. However, if credits remain available for reservation after all eligible nonelderly housing developments receive a reservation of credits, such remaining credits may be made available to additional elderly housing developments. The above limitation of credits available for elderly housing shall not include elderly housing developments with project-based subsidy providing rental assistance for at least 20% of the units that are submitted as rehabilitation developments or assisted living facilities licensed under Chapter 17 of Title 63.2 of the Code of Virginia.

If the amount of credits available in any pool is determined by the executive director to be insufficient for the financial feasibility of the proposed development to which such available credits are to be reserved, the executive director may move the proposed development and the credits available to another pool. If any credits remain in any pool after moving proposed developments and credits to another pool, the executive director may for developments that meet the requirements of § 42(h)(1)(E) of the IRC only, reserve the remaining credits to any proposed development(s) scoring at or above the minimum point threshold established by this chapter without regard to the ranking of such application with additional credits from the Commonwealth's annual state housing credit ceiling for the following year in such an amount necessary for the financial feasibility of the proposed development, or developments. However, the reservation of credits from the Commonwealth's annual state housing credit ceiling for the following year shall be in the reasonable discretion of the executive director if he determines it to be in the best interest of the plan. In the event a reservation or an allocation of credits from the current year or a prior year is reduced, terminated or cancelled, the executive director may substitute such credits for any credits reserved from the following year's annual state housing credit ceiling.

In the event that during any round of application review and ranking the amount of credits reserved within any pools is less than the total amount of credits made available therein during such round, the executive director may either (i) leave such unreserved credits in such pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute such unreserved credits to such other pool or pools as the executive director may designate or (iii) carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year.

Notwithstanding anything contained herein, the total amount of credits that may be awarded in any credit year after credit year 2001 to any applicant or to any related applicants for one or more developments shall not exceed 15% of Virginia's per capita dollar amount of credits for such credit year (the "credit cap"). However, if the amount of credits to be reserved in any such credit year to all applications assigned a total number of points at or above the threshold amount set forth above shall be less than Virginia's dollar amount of credits available for such credit year, then the authority's board of commissioners may waive the credit cap to the extent it deems necessary to reserve credits in an amount at least equal to such dollar amount of credits. Applicants shall be deemed to be related if any principal in a proposed development or any person or entity related to the applicant or principal will be a principal in any other proposed development or developments. For purposes of this paragraph, a principal shall also include any person or entity who, in the determination of the executive director, has exercised or will exercise, directly or indirectly, substantial control over the applicant or has performed or will perform (or has assisted or will assist the applicant in the performance of), directly or indirectly, substantial responsibilities or functions customarily performed by applicants with respect to applications or developments. For the purpose of determining whether any person or entity is related to the applicant or principal, persons or entities shall be deemed to be related if the executive director determines that any substantial relationship existed, either directly between them or indirectly through a series of one or more substantial relationships (e.g., if party A has a substantial relationship with party B and if

party B has a substantial relationship with party C, then A has a substantial relationship with both party B and party C), at any time within three years of the filing of the application for the credits. In determining in any credit year whether an applicant has a substantial relationship with another applicant with respect to any application for which credits were awarded in any prior credit year, the executive director shall determine whether the applicants were related as of the date of the filing of such prior credit year's application or within three years prior thereto and shall not consider any relationships or any changes in relationships subsequent to such date. Substantial relationships shall include, but not be limited to, the following relationships (in each of the following relationships, the persons or entities involved in the relationship are deemed to be related to each other): (i) the persons are in the same immediate family (including, without limitation, a spouse, children, parents, grandparents, grandchildren, brothers, sisters, uncles, aunts, nieces, and nephews) and are living in the same household; (ii) the entities have one or more common general partners or members (including related persons and entities), or the entities have one or more common owners that (by themselves or together with any other related persons and entities) have, in the aggregate, 5.0% or more ownership interest in each entity; (iii) the entities are under the common control (e.g., the same person or persons and any related persons serve as a majority of the voting members of the boards of such entities or as chief executive officers of such entities) of one or more persons or entities (including related persons and entities); (iv) the person is a general partner, member or employee in the entity or is an owner (by himself or together with any other related persons and entities) of 5.0% or more ownership interest in the entity; (v) the entity is a general partner or member in the other entity or is an owner (by itself or together with any other related persons and entities) of 5.0% or more ownership interest in the other entity; or (vi) the person or entity is otherwise controlled, in whole or in part, by the other person or entity. In determining compliance with the credit cap with respect to any application, the executive director may exclude any person or entity related to the applicant or to any principal in such applicant if the executive director determines that (i) such person or entity will not participate, directly or indirectly, in matters relating to the applicant or the ownership of the development to be assisted by the credits for which the application is submitted, (ii) such person or entity has no agreement or understanding relating to such application or the tax credits requested therein, and (iii) such person or entity will not receive a financial benefit from the tax credits requested in the application. A limited partner or other similar investor shall not be determined to be a principal and shall be excluded from the determination of related persons or entities unless the executive director shall determine that such limited partner or investor will, directly or indirectly, exercise control over the applicant or participate in matters relating to the ownership of the development substantially beyond the degree of control or participation that is usual and customary for limited partners or other similar investors with respect to developments assisted by the credits. If the award of multiple applications of any applicant or related applicants in any credit year shall cause the credit cap to be exceeded, such applicant or applicants shall, upon notice from the authority, jointly designate those applications for which credits are not to be reserved so that such limitation shall not be exceeded. Such notice shall specify the date by which such designation shall be made. In the absence of any such designation by the date specified in such notice, the executive director shall make such designation as he shall determine to best serve the interests of the program. Each applicant and each principal therein shall make such certifications, shall disclose such facts and shall submit such documents to the authority as the executive director may require to determine compliance with credit cap. If an applicant or any principal therein makes any misrepresentation to the authority concerning such applicant's or principal's relationship with any other person or entity, the executive director may reject any or all of such applicant's pending applications for reservation or allocation of credits, may terminate any or all reservations of credits to the applicant, and may prohibit such applicant, the principals therein and any persons and entities then or thereafter having a substantial relationship (in the determination of the executive director as described above) with the applicant or any principal therein from submitting applications for credits for such period of time as the executive director shall determine.

Within a reasonable time after credits are reserved to any applicants' applications, the executive director shall notify each applicant for such reservations of credits either of the amount of credits reserved to such applicant's application (by issuing to such applicant a written binding commitment to allocate such reserved credits subject to such terms and conditions as may be imposed by the executive director therein, by the IRC and by this chapter) or, as applicable, that the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance herewith. The written binding commitment shall prohibit any transfer, direct or indirect, of partnership interests (except those involving the admission of limited partners) prior to the placed-in-service date of the proposed development unless the transfer is consented to by the executive director. The written binding commitment shall further limit the developers' fees to the amounts established during the review of the applications for reservation of credits and such amounts shall not be increased unless consented to by the executive director. ~~The executive director shall, as a condition to the binding commitment, require each applicant to obtain a market study, in form and substance satisfactory to the authority, that shows adequate demand for the housing units to be produced by each applicant's proposed development.~~

If credits are reserved to any applicants for developments which have also received an allocation of credits from prior years, the executive director may reserve additional credits from the current year equal to the amount of credits allocated to such developments from prior years, provided such previously allocated credits are returned to the authority. Any previously allocated credits returned to the authority under such circumstances shall be placed into the credit pools from which the current year's credits are reserved to such applicants.

The executive director shall make a written explanation available to the general public for any allocation of housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the authority.

The authority's board shall review and consider the analysis and recommendation of the executive director for the reservation of credits to an applicant, and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the aforementioned binding commitment issued or to be issued to the applicant, the IRC and this chapter. If the board determines not to ratify a reservation of credits or to establish any such terms and conditions, the executive director shall so notify the applicant.

Subsequent to such ratification of the reservation of credits, the executive director may, in his discretion and without ratification or approval by the board, increase the amount of such reservation by an amount not to exceed 10% of the initial reservation amount.

The executive director may require the applicant to make a good faith deposit or to execute such contractual agreements providing for monetary or other remedies as it may require, or both, to assure that the applicant will comply with all requirements under the IRC, this chapter and the binding commitment (including, without limitation, any requirement to conform to all of the representations, commitments and information contained in the application for which points were assigned pursuant to this section). Upon satisfaction of all such aforementioned requirements (including any post-allocation requirements), such deposit shall be refunded to the applicant or such contractual agreements shall terminate, or both, as applicable.

If, as of the date the application is approved by the executive director, the applicant is entitled to an allocation of the credits under the IRC, this chapter and the terms of any binding commitment that the authority would have otherwise issued to such applicant, the executive director may at that time allocate the credits to such qualified low-income buildings or development without first providing a reservation of such credits. This provision in no way limits the authority of the executive director to require a good faith deposit or contractual agreement, or both, as described in the preceding paragraph, nor to relieve the applicant from any other requirements hereunder for eligibility for an allocation of credits. Any such allocation shall be subject to ratification by the board in the same manner as provided above with respect to reservations.

The executive director may require that applicants to whom credits have been reserved shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of the proposed development and its compliance with the application, the binding commitment and any contractual agreements between the applicant and the authority. If on the basis of such written confirmation and documentation as the executive director shall have received in response to such a request, or on the basis of such other available information, or both, the executive director determines any or all of the buildings in the development which were to become qualified low-income buildings will not do so within the time period required by the IRC or will not otherwise qualify for such credits under the IRC, this chapter or the binding commitment, then the executive director may (i) terminate the reservation of such credits and draw on any good faith deposit, or (ii) substitute the reservation of credits from the current credit year with a reservation of credits from a future credit year, if the delay is caused by a lawsuit beyond the applicant's control that prevents the applicant from proceeding with the development. If, in lieu of or in addition to the foregoing determination, the executive director determines that any contractual agreements between the applicant and the authority have been breached by the applicant, whether before or after allocation of the credits, he may seek to enforce any and all remedies to which the authority may then be entitled under such contractual agreements.

The executive director may establish such deadlines for determining the ability of the applicant to qualify for an allocation of credits as he shall deem necessary or desirable to allow the authority sufficient time, in the event of a reduction or termination of the applicant's reservation, to reserve such credits to other eligible applications and to allocate such credits pursuant thereto.

Any material changes to the development, as proposed in the application, occurring subsequent to the submission of the application for the credits therefor shall be subject to the prior written approval of the executive director. As a condition to any such approval, the executive director may, as necessary to comply with this chapter, the IRC, the binding commitment and any other contractual agreement between the authority and the applicant, reduce the amount of credits applied for or reserved or impose additional terms and conditions with respect thereto. If such changes are made without the prior written approval of the executive director, he may terminate or reduce the reservation of such credits, impose additional

terms and conditions with respect thereto, seek to enforce any contractual remedies to which the authority may then be entitled, draw on any good faith deposit, or any combination of the foregoing.

In the event that any reservation of credits is terminated or reduced by the executive director under this section, he may reserve, allocate or carry over, as applicable, such credits in such manner as he shall determine consistent with the requirements of the IRC and this chapter.

Notwithstanding the provisions of this section, the executive director may make a reservation of credits to any applicant that proposes a nonelderly development that (i) provides rent subsidies or equivalent assistance in order to ensure occupancy by extremely low-income persons; (ii) conforms to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; and (iii) will be actively marketed to people with disabilities in accordance with a plan submitted as part of the application for credits and approved by the executive director for at least 50% of the units in the development. Any such reservations made in any calendar year may be up to 6.0% of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year.

Notwithstanding the provisions of this section, the executive director may, except in calendar year 2010 make a reservation of credits, to any applicant that proposes to acquire and rehabilitate a nonelderly development that the executive director determines (i) cannot be acquired within the schedule for the competitive scoring process described in this section and (ii) cannot be financed with tax-exempt bonds using the authority's normal underwriting criteria for its multifamily tax-exempt bond program. Any proposed development subject to an application submitted under this paragraph must meet the following criteria: (i) at least 20% of the units in the development must be low-income housing units for residents at 50% of the area median income or less, (ii) the development must be eligible for points under subdivision 3 b (1) (g) of this section or a combination of at least 20 points under subdivisions 3 b (1) (b) through 3 b (1) (j), excluding subdivision 3 b (1) (c), (iii) the executive director's review of the application must confirm that the portion of the developer's fee to be deferred is at least 5.0% of the total development costs, (iv) participation by the local government in the form of low-interest loan/grant moneys from such locality's affordable housing funds in an amount equal to or greater than 20% of the total development costs, and (v) the application for the development must obtain as many points as the lowest ranked development that could have received a partial reservation of credits from the geographic pool in which the applicant would have been ranked in the most recent competitive scoring round. Any such reservations made in any calendar year may be up to 15% of the Commonwealth's annual state housing credit ceiling for the applicable credit year, of which at least 10% of the Commonwealth's annual state housing credit ceiling for the applicable credit year will be reserved for developments within Arlington County, Fairfax County, Alexandria City, Fairfax City or Falls Church City. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year.

13VAC10-180-80. ~~Reservation and allocation of additional credits.~~ (Repealed.)

~~Prior to the initial determination of the qualified basis (as defined in the IRC) of the qualified low-income buildings of a development pursuant to the IRC, an applicant to whose buildings' credits have been reserved may submit an application for a reservation of additional credits. Subsequent to such initial determination of the qualified basis, the applicant may submit an application for an additional allocation of credits by reason of an increase in qualified basis based on an increase in the number of low-income housing units or in the amount of floor space of the low-income housing units. Any application for an additional allocation of credits shall include such information, opinions, certifications and documentation as the executive director shall require in order to determine that the applicant's buildings or development will be entitled to such additional credits under the IRC and this chapter. The application shall be submitted, reviewed, ranked and selected by the executive director in accordance with the provisions of 13VAC10-180-60, and any allocation of credits shall be made in accordance with 13VAC10-180-70. For the purposes of such review, ranking and selection and the determinations to be made by the executive director under the rules and regulations as to the financial feasibility of the development and its viability as a qualified low-income development during the credit period, the amount of credits previously reserved to the application or allocated to the buildings or development (or, in the case of any development or building to be financed by certain tax-exempt bonds in an amount so as not to require an allocation of credits hereunder, the amount of credit which may be claimed by the applicant) shall be included with the amount of such credits so requested.~~

VA.R. Doc. No. R10-2185; Filed October 21, 2009, 10:02 a.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Proposed Regulation

Title of Regulation: **14VAC5-90. Rules Governing Advertisement of Accident and Sickness Insurance (amending 14VAC5-90-170).**

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Public Hearing Information: A public hearing will be held upon request.

Public Comment Deadline: November 16, 2009.

Agency Contact: Jacqueline Cunningham, Deputy Commissioner, Bureau of Insurance, State Corporation Commission, 1300 East Main Street, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9074, FAX (804) 371-9944, or email jackie.cunningham@scc.virginia.gov.

Summary:

The proposed amendment eliminates the requirement for insurers to file a Certificate of Advertising Compliance with its Annual Statement filing. Subsection B of 14VAC5-90-170 is being deleted, as well as accompanying Form R04.

AT RICHMOND, OCTOBER 8, 2009

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2009-00221

Ex Parte: In the matter of Adopting
Amendments to the Rules Governing
Advertisement of Accident and
Sickness Insurance

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia. The regulations issued by the Commission pursuant to § 38.2-223 are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance ("Bureau") has submitted to the Commission a request to amend the regulations set forth in Chapter 90 of Title 14 of the Virginia Administrative Code, entitled "Rules Governing Advertisement of Accident and Sickness Insurance." The proposed amendment of 14 VAC 5-90-170 is necessary because the certification statement contained in subsection B has not improved the quality of advertisement by insurers. Advertisement quality is better served through the standards set forth in the regulations. Therefore, the Bureau has recommended that subsection B be deleted, as well as the associated Form R04.

The Commission is of the opinion that the proposed amendment submitted by the Bureau should be considered for adoption with an effective date of January 1, 2010.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulation entitled "Rules Governing Advertisement of Accident and Sickness Insurance," which amends 14 VAC 5-90-170, be attached hereto and made a part hereof.

(2) All interested persons who desire to comment or request a hearing on the proposed regulation shall file such comments or hearing request on or before November 16, 2009, in writing with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, 1300 East Main Street, 1st Floor, Richmond, Virginia 23219 and shall refer to Case No. INS-2009-00221. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: http://www.scc.virginia.gov/case.

(3) If no written request for a hearing on the proposed regulation is filed on or before November 16, 2009, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed regulation, may adopt the proposed regulation as submitted by the Bureau.

(4) The Commission's Division of Information Resources shall cause a copy of this Order, together with the proposed regulation, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations and shall make this Order and the attached proposed regulation available on the Commission's website, http://www.scc.virginia.gov/case.

(5) AN ATTESTED COPY hereof, together with a copy of the proposed regulation, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Jacqueline K. Cunningham, who shall mail a copy of this Order, together with the proposed regulation, to all insurance

companies licensed by the Commission to write accident and sickness insurance in the Commonwealth of Virginia, and certain other interested parties designated by the Bureau.

(6) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (5) above.

14VAC5-90-170. Enforcement procedures; advertising file; ~~certificate of compliance;~~ corrective advertising.

A. Each insurer shall maintain at its home or principal office a complete file containing every printed, published or prepared advertisement of its individual policies and typical printed, published or prepared advertisements of its blanket, franchise and group policies hereafter disseminated in this or any other state, whether or not licensed in another state, with a notation attached to each advertisement that indicates the manner and extent of distribution and the form number of any policy advertised. The file shall be subject to regular and periodical inspection by the commission. All the advertisements shall be maintained in a file for the longer of four years or until the filing of the next regular report on examination of the insurer.

~~B. Each insurer required to file an Annual Statement with the commission shall file with its Annual Statement, a Certificate of Advertising Compliance executed by an authorized officer of the insurer stating that, to the best of the officer's knowledge, information, and belief, the advertisements that were disseminated by the insurer during the preceding statement year complied or were made to comply in all respects with the provisions of this chapter and Title 38.2 of the Code of Virginia as implemented and interpreted by this chapter.~~

~~C.~~ B. If the commission finds, after notice and opportunity to be heard, as provided in § 38.2-219 of the Code of Virginia, that any advertisement is in violation of the provisions of this chapter and that the violation was to substantially deceive or to mislead the public, the commission may, in addition to any other remedy or monetary penalty it may otherwise impose, order the insurer responsible for the dissemination of such advertisement to publish at the insurer's expense, a corrective advertisement in a form to be approved by the commission. If an insurer fails to publish a corrective advertisement as required by the commission, the commission may cause a corrective advertisement to be published, and the insurer shall, in addition to any other penalty that may have been imposed, reimburse the commission for the expenses incurred in connection with the publication of the advertisement.

FORMS (14VAC5-90) (Repealed.)

~~Certificate of Advertising Compliance, Form R04 (eff. 11/03).~~

VA.R. Doc. No. R10-2173; Filed October 9, 2009, 2:45 p.m.

Proposed Regulation

Titles of Regulations: **14VAC5-310. Rules Governing Actuarial Opinions and Memoranda (amending 14VAC5-310-90).**

14VAC5-321. Use of the 2001 CSO Mortality Table in Determining Reserve Liabilities and Nonforfeiture Benefits (amending 14VAC5-321-30).

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Public Hearing Information: A public hearing will be scheduled upon request.

Public Comment Deadline: November 29, 2009.

Agency Contact: Raquel C. Pino-Moreno, Principal Insururance Analyst, Bureau of Insurance, State Corporation Commission, 1300 E. Main Street, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9499, FAX (804) 371-9511, or email raquel.pino-moreno@scc.virginia.gov.

Summary:

The revisions allow the Bureau of Insurance to authorize insurance companies to use the 2001 CSO Mortality Table for policies issued on or after January 1, 2004 (14VAC5-321), the current provision is applicable for policies issued on or after July 1, 2004. The proposed revisions also require an appointed actuary to produce a report attesting to the fact that a company has booked reserves satisfying the minimum reserve requirements and describing how they reached their conclusion regarding adequacy (14VAC5-310). The proposed revisions to the rules are based on the National Association of Insurance Commissioner's (NAIC) revisions to its Actuarial Opinion and Memorandum Regulation Model, which was adopted by the NAIC on September 23, 2009, and its Recognition of the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits Model Regulation, which was adopted by the NAIC in 2002.

AT RICHMOND, OCTOBER 21, 2009

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2009-00230

Ex Parte: In the matter of Adopting
Revisions to the Rules Governing
Actuarial Opinions and Memoranda
and Use of the 2001 CSO Mortality Table
in Determining Reserve Liabilities
and Nonforfeiture Benefits

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia. The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed amendments to the regulations set forth in Chapter 310 and 321 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Actuarial Opinions and Memoranda" and "Use of the 2001 CSO Mortality Table in Determining Reserve Liabilities and Nonforfeiture Benefits."

The proposed amendments to the Rules Governing Actuarial Opinions and Memoranda are based on the National Association of Insurance Commissioners' ("NAIC") revisions to the model regulation on the same subject which were adopted on September 23, 2009. The proposed amendments to the Use of the 2001 CSO Mortality Table in Determining Reserve Liabilities for Nonforfeiture Benefits are based on the NAIC's revisions to the model regulations on the same subject which were adopted in 2002.

The Commission is of the opinion that the proposed amendments submitted by the Bureau and set out at 14 VAC 5-310-90 and 14 VAC 5-321-30 should be considered for adoption with an effective date of December 31, 2009.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations entitled "Rules Governing Actuarial Opinions and Memoranda" and "Use of the 2001 CSO Mortality Table in Determining Reserve Liabilities and Nonforfeiture Benefits," which amend the regulations at 14 VAC 5-310-90 and 14 VAC 5-321-30, be attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose the adoption of the proposed regulations, shall file such comments or hearing request on or before November 29, 2009, in writing, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case No. INS-2009-00230. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: http://www.scc.virginia.gov/case.

(3) If no written request for a hearing on the proposed regulations is filed on or before November 29, 2009, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed regulations, may adopt the proposed regulations as submitted by the Bureau.

(4) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed regulations, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations and shall make available this Order and the attached proposed regulations on the Commission's website, http://www.scc.virginia.gov/case.

(5) AN ATTESTED COPY hereof, together with a copy of the proposed regulations, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the proposed adoption of the amended regulations by mailing a copy of this Order, together with the proposed regulations, to all licensed life insurers, burial societies, fraternal benefit societies, qualified reinsurers, and certain interested parties designated by the Bureau.

(6) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (5) above.

14VAC5-310-90. Description of actuarial memorandum issued for an asset adequacy analysis and regulatory asset adequacy issues summary.

A. The following general provisions shall apply with respect to the preparation and submission of the asset adequacy memorandum required by § 38.2-3127.1 of the Code of Virginia.

1. In accordance with § 38.2-3127.1 of the Code of Virginia, the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of his opinion regarding the reserves. The memorandum shall be made available for examination by the commission upon its request but shall be returned to the company after such examination and shall not be considered a record of the Bureau of Insurance or subject to automatic filing with the commission.

2. In preparing the memorandum, the appointed actuary may rely on, and include as a part of his memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of 14VAC5-310-50 B, with respect to the areas covered in such memoranda, and so state in their memoranda.

3. If the commission requests a memorandum and no such memorandum exists or if the commission finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards

and requirements of this chapter, the commission may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the commission.

4. The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the commission; ~~provided,~~ however, ~~that~~ any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the commission and shall be kept confidential to the same extent as is prescribed by law with respect to other material provided by the company to the commission pursuant to the statute governing this chapter. The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this chapter for any one of the current year or the preceding three years.

5. In accordance with § 38.2-3127.1 of the Code of Virginia, the appointed actuary shall prepare a regulatory asset adequacy issues summary, the contents of which are specified in subsection C of this section. The regulatory asset adequacy issues summary shall be submitted no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required. The regulatory asset adequacy issues summary is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

B. A section of the memorandum shall document asset adequacy testing by demonstrating that the analysis has been done in accordance with the standards for asset adequacy referred to in 14VAC5-310-50 D and any additional standards under this chapter. It shall specify:

1. For reserves:

a. Product descriptions including market description, underwriting and other aspects of a risk profile, and the specific risks the appointed actuary deems significant;

b. Source of liability in force;

c. Reserve method and basis;

d. Investment reserves;

e. Reinsurance arrangements;

f. Identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis; and

g. Documentation of assumptions to test reserves for (i) lapse rates, whether base or excess, (ii) interest crediting rate strategy, (iii) mortality, (iv) policyholder dividend strategy, (v) competitor or market interest rate, (vi) annuitization rates, (vii) commission and expenses, and (viii) morbidity.

The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumption.

2. For assets:

a. Portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets;

b. Investment and disinvestment assumptions;

c. Source of asset data;

d. Asset valuation bases; and

e. Documentation of assumptions made for (i) default costs, (ii) bond call function, (iii) mortgage prepayment function, (iv) determining market value for assets sold due to disinvestment strategy, and (v) determining yield on assets acquired through the investment strategy.

The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumption.

3. For the analysis basis:

a. Methodology;

b. Rationale for inclusion or exclusion of different blocks of business and how pertinent risks were analyzed;

c. Rationale for degree of rigor in analyzing different blocks of business, including the rationale for the level of "materiality" that was used in determining how rigorously to analyze different blocks of business;

d. Criteria for determining asset adequacy, including in the criteria the precise basis for determining if assets are adequate to cover reserves under "moderately adverse conditions" or other conditions as specified in relevant actuarial standards of practice; and

e. Whether the impact of federal income taxes was considered and the method of treating reinsurance in the asset adequacy analysis.

4. Summary of material changes in methods, procedures, or assumptions from prior year's asset adequacy analysis;

5. Summary of results; and

6. Conclusion.

C. The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rendering the actuarial opinion. The regulatory asset adequacy issues summary also shall include each of the following:

1. Descriptions of the scenarios tested, including whether those scenarios are stochastic or deterministic, and the sensitivity testing done relative to those scenarios. If negative ending surplus results under certain tests in the aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date which, if held, would eliminate the negative aggregate surplus values. Ending surplus values shall be determined by either extending the projection period until the in-force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that reasonably can be expected to arise from the assets and liabilities remaining in force;

2. The extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different from the assumptions used in the previous asset adequacy analysis;

3. The amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion;

4. Comments on any interim results that may be of significant concern to the appointed actuary. For example, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods;

5. The methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each of the scenarios tested; and

6. Whether the actuary has been satisfied that all options whether explicit or embedded, in any asset or liability, including but not limited to those affecting cash flows embedded in fixed income securities, and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.

D. The actuarial methods, considerations, and analyses shall conform to appropriate standards of practice and the memorandum shall include the following statement:

"Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum."

E. An appropriate allocation of assets in the amount of Interest Maintenance Reserve (IMR), whether positive or negative, shall be used in any asset adequacy analysis. Analysis of risks regarding asset default shall include an appropriate allocation of assets supporting the Asset Valuation Reserve (AVR); these AVR assets shall not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks shall include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support. The amount of the assets used for the AVR shall be disclosed in the Table of Reserves and Liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets shall be disclosed in the memorandum.

14VAC5-321-30. 2001 CSO Mortality Table.

A. At the election of the insurer for any one or more specified plans of insurance and subject to the conditions stated in this chapter, the 2001 CSO Mortality Table may be used as the minimum standard for policies issued on or after ~~July~~ January 1, 2004, and before the date specified in subsection B of this section to which subdivision 1 of § 38.2-3130 and § 38.2-3209 of the Code of Virginia are applicable. If the insurer elects to use the 2001 CSO Mortality Table, it shall do so for both valuation and nonforfeiture purposes.

B. Subject to the conditions stated in this chapter, the 2001 CSO Mortality Table shall be used in determining minimum standards for policies issued on and after January 1, 2009, to which subdivision 1 of § 38.2-3130 and § 38.2-3209 of the Code of Virginia are applicable.

C. A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of 14VAC5-322, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to the requirements of this chapter.

VA.R. Doc. No. R10-2018; Filed October 21, 2009, 11:15 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Final Regulation

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

Title of Regulation: **18VAC30-20. Regulations Governing the Practice of Audiology and Speech-Language Pathology (amending 18VAC30-20-70).**

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

Effective Date: December 9, 2009.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Audiology and Speech-Language Pathology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4630, FAX (804) 527-4413, or email leslie.knachel@dhp.virginia.gov.

Summary:

In compliance with Chapter 687 of the 2009 Acts of Assembly, the Board of Audiology and Speech-language Pathology has amended its regulations relating to the responsibility of the licensee or registrant to provide current addresses. Every licensee and registrant is required to provide an address of record for use by the board, and is permitted to provide a second address to be used as the public address. If a second address is not provided, the address of record becomes the public address. Regulations are amended to use the statutory terminology of address of record and to clarify that the regulant has a responsibility to notify the board within 30 days if there is a change in the address of record or the public address, if different from the address of record.

18VAC30-20-70. Records; accuracy of information.

A. All changes of ~~mailing address or~~ name, address of record or public address, if different from the address of record, shall be furnished to the board within 30 days after the change occurs.

B. All notices required by law and by this chapter to be mailed by the board to any registrant or licensee shall be validly given when mailed to the latest address of record on file with the board.

VA.R. Doc. No. R10-2117; Filed October 20, 2009, 10:31 a.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 7 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Health Professions pursuant to Title 54.1 that are limited to reducing fees charged to regulants and applicants. The Board of Audiology and Speech-Language Pathology will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC30-20. Regulations Governing the Practice of Audiology and Speech-Language Pathology (amending 18VAC30-20-80).**

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

Effective Date: December 9, 2009.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Audiology and Speech-Language Pathology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4630, FAX (804) 527-4413, or email leslie.knachel@dhp.virginia.gov.

Summary:

In order to reduce an accumulated surplus in the budget of the Board of Audiology and Speech-Language Pathology, a one-time reduction in renewal fees has been adopted. The renewal fee for audiologists and speech-language pathologists will be reduced for the annual renewal from $75 to $40, and for school speech-language pathologists, the renewal fee will be reduced from $40 to $20. Fees for inactive licensure and provisional licensure in audiology (which are approximately one-half the active renewal fee) are reduced correspondingly.

18VAC30-20-80. Fees.

A. The following fees shall be paid as applicable for licensure:

1. Application for audiology or speech-language pathology license	$135
2. Application for school speech-language pathology license	$70
3. Verification of licensure requests from other states	$20
4. Annual renewal of audiology or speech-language pathology license	$75
5. Late renewal of audiology or speech-language pathology license	$25
6. Annual renewal of school speech-language pathology license	$40

7. Late renewal of school speech-language pathology license	$15
8. Reinstatement of audiology or speech-language pathology license	$135
9. Reinstatement of school speech-language pathology license	$70
10. Duplicate wall certificates	$25
11. Duplicate license	$5
12. Returned check	$35
13. Inactive license renewal for audiology or speech-language pathology	$40
14. Inactive license renewal for school speech-language pathology	$20
15. Approval of a continuing education sponsor	$200
16. Application for provisional license in audiology	$50
17. Renewal of provisional license in audiology	$25

B. Fees shall be made payable to the Treasurer of Virginia and shall not be refunded once submitted.

C. For the renewal of licenses by December 31, 2009, the fees shall be as follows:

1. Annual renewal of audiology or speech-language pathology license	$40
2. Annual renewal of school speech-language pathology license	$20
3. Inactive license renewal for audiology or speech-language pathology	$20
4. Renewal of provisional license in audiology	$15

VA.R. Doc. No. R10-2166; Filed October 20, 2009, 10:31 a.m.

BOARD OF NURSING

Fast-Track Regulation

Title of Regulation: **18VAC90-20. Regulations Governing the Practice of Nursing (amending 18VAC90-20-181).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 9, 2009.

Effective Date: December 24, 2009.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations.

Purpose: The purpose of the action is to update requirements for issuance of a license with a multistate licensure privilege. Consistency with Model Rules for the Compact is necessary to ensure that nurses with a multistate privilege are appropriately licensed and able to provide services to protect the health and safety of patients in Virginia. If a compact state has restricted the privilege and only issued a single state license, such action must be acknowledged on the license.

Rationale for Using Fast-Track Process: The board is merely conforming language in its regulations with the Model Rules for the Nurse Licensure Compact, so the changes are not more restrictive and not expected to be controversial.

Substance: Two new identification forms would be acceptable evidence as primary residency, and a nurse from another country would have a choice of declaring either the country of origin or Virginia as the primary state. Additionally, a new regulation would specify that a single state license should be clearly marked that it is valid only in the state of issuance.

Issues: There are no advantages or disadvantages to the public. The primary advantage to the agency is consistency with the Nurse Licensure Compact of which Virginia is a member. There are no pertinent issues.

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

Summary of the Proposed Amendments to Regulation. The Board of Nursing (Board) proposes to amend its Regulations Governing the Practice of Nursing to allow two new forms of identification as proof of primary residency for the purposes of obtaining a license with multistate licensure privileges. The board also proposes to allow foreign nurses who are in the United States on a visa and are applying for licensure in Virginia to declare either Virginia or their country of origin as their primary state of residence.

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

Estimated Economic Impact. Current regulations allow Virginia to issue a license with a multistate licensure privilege, for nurses who are currently licensed in Virginia or who are applying for licensure in Virginia, so long as the primary residence of the nurse seeking such a license is in Virginia. Currently, nurses may offer 1) a driver's license with a home address listed, 2) a voter registration card with a home address listed or 3) a federal or state tax return

declaring Virginia as primary state of residence as evidence that they meet the requirements for the multistate licensure privilege.

The Board proposes to add two new forms of identification, 1) Military Form No. 2058— state of legal residence and 2) form W2 from the United States Government or any bureau, division or agency thereof indicating Virginia as a declared state of residence, to this list of acceptable proof of residence. The Board also proposes to allow foreign nurses who are in the United States on a visa, and are applying for Virginia licensure, to choose whether they will list Virginia or their home country as their primary state of residence. If a foreign nurse declares his or her home country as the primary state of residence, he/she will only be eligible for a single state (Virginia) license. These proposed changes will make Virginia regulations consistent with the model rules for the compact that governs multistate licensure.

Since the proposed changes do not impose any new restrictions on licensees, no entity is likely to incur any additional costs on account of this regulatory action. Licensed Nurses, and applicants for nursing licensure, are likely to benefit from being able to use a wider variety of proof of residency as this will allow nurses who, for instance, have recently moved to Virginia and who have changed their addresses on their W2s… but who have not yet obtained a Virginia driver's license or registered to vote… to obtain multistate licensure.

Businesses and Entities Affected. The Department of Health Professions (DHP) reports that the Board currently licenses 5,200 registered nurses and 784 licensed practical nurses.

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

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

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

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

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

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

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

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Nursing concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18VAC90-20, Regulations Governing the Practice of Nursing.

Summary:

The proposed amendments make board regulations for the issuance of a multistate licensure privilege consistent with the Model Rules of the Nurse Licensure Compact. Two new identification forms are acceptable evidence as primary residency, and a nurse from another country has a choice of declaring either the country of origin or Virginia as the primary state. Additionally, a new regulation specifies that a single state license should be clearly marked that it is valid only in the state of issuance.

18VAC90-20-181. Issuance of a license with a multistate licensure privilege.

A. In order to be issued a license with a multistate licensure privilege by the board, a nurse currently licensed in Virginia or a person applying for licensure in Virginia shall submit a declaration stating that his primary residence is in Virginia. Evidence of a primary state of residence may be required to include but not be limited to:

1. A driver's license with a home address;

2. A voter registration card displaying a home address; ~~or~~

3. A federal or state tax return declaring the primary state of residence~~.~~ ;

4. A Military Form No. 2058 – state of legal residence; or

5. A W-2 from the United States government or any bureau, division, or agency thereof indicating the declared state of residence.

B. A nurse on a visa from another country applying for licensure in Virginia may declare either the country of origin or Virginia as the primary state of residence. If the foreign country is declared as the primary state of residence, a single state license shall be issued by Virginia.

C. A nurse changing the primary state of residence from another party state to Virginia may continue to practice under the former party state license and multistate licensure privilege during the processing of the nurse's licensure application by the board for a period not to exceed 30 days.

1. If a nurse is under a pending investigation by a former home state, the licensure application in Virginia shall be held in abeyance and the 30-day authorization to practice stayed until resolution of the pending investigation.

2. A license issued by a former party state shall no longer be valid upon issuance of a license by the board.

3. If the board denies licensure to an applicant from another party state, it shall notify the former home state within 10 business days, and the former home state may take action in accordance with the laws and regulations of that state.

D. A license issued by a party state is valid for practice in all other party states, unless clearly designated as valid only in the state that issued the license. When a party state issues a license authorizing practice only in that state and not authorizing practice in other party states, the license shall be clearly marked with words indicating that it is valid only in the state of issuance.

VA.R. Doc. No. R10-1938; Filed October 20, 2009, 10:31 a.m.

REAL ESTATE BOARD

Final Regulation

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

Title of Regulation: **18VAC135-40. Time-Share Regulations (repealing 18VAC135-40-20, 18VAC135-40-50, 18VAC135-40-60, 18VAC135-40-80, 18VAC135-40-100, 18VAC135-40-110, 18VAC135-40-140, 18VAC135-40-150, 18VAC135-40-160, 18VAC135-40-420, 18VAC135-40-430).**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Effective Date: December 11, 2009.

Agency Contact: Christine Martine, Executive Director, Real Estate Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4299, or email reboard@dpor.virginia.gov.

Summary:

Chapters 851 and 871 of the 2008 Acts of Assembly established the Common Interest Community Board. In addition, Clause 2 of Chapters 851 and 871 states that the Common Interest Community Board is successor in interest to the Real Estate Board to the extent that the law transfers powers and duties. As a result of the transfer of powers and duties to the Common Interest Community Board, the Real Estate Board Time-Share regulations should be repealed. The transfer of the regulations to the Common Interest Community Board became effective November 27, 2008.

VA.R. Doc. No. R10-2181; Filed October 13, 2009, 2:22 p.m.

Final Regulation

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

Title of Regulation: **18VAC135-60. Common Interest Community Management Information Fund Regulations (repealing 18VAC135-60-10 through 18VAC135-60-60).**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Effective Date: December 11, 2009.

Agency Contact: Thomas Perry, Property Registration Administrator, Real Estate Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (804) 527-4299, or email propreg@dpor.virginia.gov.

Summary:

Chapters 851 and 871 of the 2008 Acts of Assembly established the Common Interest Community Board. In addition, Clause 2 of Chapters 851 and 871 states that the Common Interest Community Board is successor in interest to the Real Estate Board to the extent that the law transfers powers and duties. As a result of the transfer of powers and duties to the Common Interest Community Board, the Real Estate Board Common Interest Community Management Information Fund regulations should be repealed. The transfer of the regulations to the Common Interest Community Board became effective November 27, 2008.

VA.R. Doc. No. R10-2182; Filed October 13, 2009, 2:21 p.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

Final Regulation

Title of Regulation: **24VAC35-60. Ignition Interlock Program Regulations (adding 24VAC35-60-10 through 24VAC35-60-110).**

Statutory Authority: § 18.2-270.2 of the Code of Virginia.

Effective Date: January 1, 2010.

Agency Contact: Richard L. Foy, Technical Instructor, Commission on the Virginia Alcohol Safety Action Program, 701 East Franklin Street, Suite 1110, Richmond, VA 23219, telephone (804) 786-5895, FAX (804) 786-6286, or email rfoy.vasap@state.va.us.

Summary:

This regulation provides information regarding the certification of service providers and ignition interlock devices in Virginia. Procedures for the installation, maintenance, and removal of ignition interlock devices are outlined as well as requirements for reporting and recordkeeping.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

CHAPTER 60
IGNITION INTERLOCK PROGRAM REGULATIONS

24VAC35-60-10. Purpose.

The purpose of these regulations is to establish a set of standards for the Commonwealth of Virginia's ignition interlock program. Authority to issue these regulations is granted to the Executive Director of the Commission on Virginia Alcohol Safety Action Program (VASAP) or authorized designee by § 18.2-270.2 of the Code of Virginia.

24VAC35-60-20. Definitions.

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

"Alcohol" means ethyl alcohol, also called ethanol (C_2H_5OH).

"BAC" or "blood alcohol concentration" means the amount of alcohol in an offender's blood or breath as determined by chemical analysis, which shall be measured by the number of grams of alcohol per 100 milliliters of blood, or 210 liters of breath.

"Breath test" means an analysis of the breath alcohol concentration of a deep lung breath sample.

"Calibration" means the process that ensures an accurate alcohol concentration reading is being obtained on the ignition interlock device.

"Commission" means the Commission on Virginia Alcohol Safety Action Program (VASAP).

"Deep lung breath sample," also known as "alveolar breath sample," means an air sample that is the last portion of a prolonged, uninterrupted exhalation and that gives a quantitative measurement of alcohol concentration from which breath alcohol concentrations can be determined. "Alveolar" refers to the aveoli, which are the smallest air passages in the lungs, surrounded by capillary blood vessels and through which an interchange of gases occurs during respiration.

"Device" means a breath alcohol ignition interlock device.

"Device certification" means the testing and approval process required by the Commission on Virginia Alcohol Safety Action Program (VASAP).

"DMV" means the Virginia Department of Motor Vehicles.

"Fail point" means the point at which the breath alcohol level of 0.02% is met.

"Free restart" means the ability to start the engine again within a preset period of time without completion of another breath test, when the condition exists where a breath test is successfully completed and the motor vehicle is started, but then the engine stops for any reason (including stalling).

"Ignition interlock system" means a device that (i) connects a motor vehicle ignition system to an analyzer that measures an offender's blood alcohol concentration; (ii) prevents a motor vehicle ignition from starting if the offender's blood alcohol concentration is at or above the fail point; and (iii) is equipped with the ability to perform a rolling retest and to electronically log the blood alcohol concentration during ignition, attempted ignition, and rolling retest.

"Interlock event" means vehicle operator activity that is recorded by the ignition interlock to include, but not limited to, vehicle starts and attempted starts, rolling retests, breath tests, lockouts, ignition shutoffs, power outages, and interlock tampering.

"Licensing" means the process of determining that a service center meets the requirements set by the Commission on VASAP.

"Lockout" means the ability of the ignition interlock device to prevent a motor vehicle's engine from starting.

"Manufacturer" means the actual maker of the ignition interlock device who assembles the product and distributes it to service providers.

"Motor vehicle" means every vehicle as defined in § 46.2-100 of the Code of Virginia, that is self-propelled, or designed for self-propulsion, to exclude bicycles, electric power-assisted mobility devices, electric powered-assisted bicycles, and mopeds.

"Offender" means the individual required by the court or the Department of Motor Vehicles to drive only motor vehicles that have certified ignition interlock devices installed.

"Permanent lockout" means a feature of the ignition interlock device in which a motor vehicle will not start until the ignition interlock device is reset by a service provider.

"Retest" means an additional opportunity to provide a deep lung breath sample below the alcohol fail point.

"Rolling retest" means a test of the offender's blood alcohol concentration required at random intervals during operation of the motor vehicle, which triggers the sounding of the horn and flashing of lights if (i) the test indicates that the offender has a blood alcohol concentration that is at or above the fail point or (ii) the offender fails to take the test.

"Service center" means the physical location where the service provider installs, calibrates, and removes the ignition interlock device on the offender's vehicle.

"Service provider" means [~~the~~ an] authorized supplier and installer of the approved ignition interlock devices. In some cases, the service provider may also be a manufacturer of an ignition interlock device.

"Tampering" means an unlawful act or attempt to disable or circumvent the legal operation of the ignition interlock device to include providing samples other than the natural breath of the offender, starting the motor vehicle without using the ignition switch, any other act intended to start the motor vehicle without first taking and passing a breath test, or physically tampering with the device to disable or otherwise disconnect the device from its power source.

"Temporary lockout" means a feature of the ignition interlock device that will not allow the motor vehicle to start for a preset time period after a breath test result indicates a BAC at or above the fail point.

"Vendor certification" means the process of determining that a vendor has been approved to provide services in the Commonwealth of Virginia.

"Violation" means an event, such as a breath test indicating a BAC at or above the fail point upon initial startup, a refusal to provide a rolling retest deep lung breath sample, a rolling retest with a BAC at or above the fail point, or tampering, which breaches the guidelines for use of the interlock device.

"Violation reset" means a feature of the ignition interlock device in which a service reminder is activated due to a violation.

24VAC35-60-30. When ignition interlock devices are required.

Ignition interlock devices are required:

1. When ordered by a court of proper jurisdiction pursuant to § 18.2-270.1 of the Code of Virginia; or

2. When administratively enforced by DMV pursuant to § 46.2-391.01 of the Code of Virginia.

24VAC35-60-40. Approval of manufacturers and service providers.

A. The commission shall issue a request for proposals (RFPs) in compliance with the state procurement procedures to contract with ignition interlock service providers for the services and commodities required for the implementation and maintenance of the Commonwealth's ignition interlock program. Contracts will be for three years with an optional two-year renewal.

B. Integrity of the Ignition Interlock Program shall be upheld by restricting the delivery of interlock client service to the actual provider of the product (authorized service provider), thereby effectively preventing the extension of subcontracts to other persons or businesses who lack long-term investment, long-term experience, or in-depth knowledge of product and service, potentially resulting in a higher likelihood of neglect of duty or illegal exchange of funds. Denial of subcontracting of the interlock service to the consumer is an integral part of protecting the chain of evidence for court testimony and evidentiary procedures.

C. Each service provider seeking to contract with the commission shall submit:

1. Evidence of a strong background in the development and maintenance of a statewide ignition interlock service program and evidence of operational programs in other states. The service provider must be dedicated to the installation and maintenance of ignition interlock devices and must supply and train staff and service center supervisors to assure good customer service and compliance with all contract requirements. [~~Any personnel~~ Personnel] hired to install, calibrate, or inspect ignition interlock devices may not have ever been convicted of [~~a~~ any] felony or a crime substantially related to the qualifications, functions, and duties associated with the installation and inspection of the [~~devices,~~ devices;] or within a five-year period prior to hiring [,] been convicted of a misdemeanor potentially punishable by confinement. The service provider must be able to ensure that technicians are trained and available to testify in court if required for noncompliance hearings.

2. A description of the service provider's present or planned provisions for distribution of the device in Virginia including all locations in the state where the device may be installed, serviced, repaired, calibrated, inspected, and monitored. Each facility shall be approved by the Commission on VASAP prior to its use and meet the following criteria:

a. Must pay an annual review fee to the Commission on VASAP.

b. Must comply with all local business license and zoning regulations, and with all federal, state, and local health, fire, and building code requirements.

c. Must [~~meet the offender's physical needs for access~~ comply with all local, state, and federal laws pertaining to the provision of physical access to persons with disabilities].

d. Must maintain offender records in a manner that complies with federal confidentiality guidelines.

In addition, all services must be available statewide within a 50-mile drive to the home location of all residents of the Commonwealth.

3. Documentation of insurance covering product liability, including coverage in Virginia, with a minimum policy limit of $1 million per occurrence, and $3 million aggregate total. The service provider shall provide a signed statement from the manufacturer holding harmless the Commonwealth of Virginia, the commission, and its members, employees, and agents from all claims, demands, and actions, as a result of damage or injury to persons or property that may arise, directly or indirectly, out of any act or omission by the manufacturer or their service provider relating to the installation, service, repair, use, and/or removal of an ignition interlock device.

4. Documentation that the service provider will provide a full-time state ignition interlock coordinator who will work exclusively with the Virginia interlock program and reside in the Richmond, Virginia area. Among other duties, the coordinator will be expected to (i) respond promptly to any problems in the field, (ii) testify in court upon request, and (iii) assist and provide training to VASAP staff.

D. Provided that all vendor and device certification requirements are met, the commission shall contract with those manufacturers or service providers, and may approve multiple makes and models of ignition interlock devices for use in the Commonwealth.

24VAC35-60-50. Fees.

A. All potential service providers desiring to conduct business in the Commonwealth of Virginia's ignition interlock program shall submit a $250 nonrefundable application fee.

B. The Commission on VASAP will establish by contract the following additional fees to be paid by the service provider:

1. Annual contract review fee to the Commission on VASAP.

2. Annual review fee for each service center to the Commission on VASAP.

3. Monthly fee to the Commission on VASAP for each offender with an ignition interlock installed until the device is removed.

4. Monthly fee to the local servicing ASAP for each offender with an ignition interlock device installed until the device is removed.

C. All service providers shall create and maintain an indigency fund for offenders who are eligible for a reduction in fees based upon a declaration of indigency by the court and approval by the commission.

24VAC35-60-60. Cancellation, suspension, and revocation of manufacturers, service providers, and ignition interlock devices.

A. The commission may cancel, suspend, or revoke certification of an ignition interlock device and/or its manufacturer and service provider for the following reasons:

1. When there is a voluntary request by a manufacturer to cancel certification of a device.

2. When a device is discontinued by the manufacturer.

3. When the manufacturer's liability insurance is terminated or cancelled.

4. When the manufacturer or service provider attempts to conceal its true ownership.

5. When materially false or inaccurate information is provided relating to a device's performance standards.

6. When there are defects in design, materials, or workmanship causing repeated failures of a device.

7. When the manufacturer or service provider knowingly permits nonqualified service technicians to perform work.

8. When a manufacturer or service provider assists users with circumventing or tampering with a device.

9. When service or the submission of required reports is not provided in a timely manner.

10. When required fees are not paid to the commission or local programs.

11. When there is a pattern of substandard customer service.

12. When the manufacturer or service provider interferes with or obstructs a site review or investigation by the commission.

13. When there are any other violations of the provisions contained in the Code of Virginia, commission regulations, or the ignition interlock contract.

14. When a manufacturer or service provider solicits the employment of another manufacturer's or service provider's technician, facility manager, or state ignition interlock coordinator.

15. When a manufacturer or service provider solicits business outside of the VASAP, or otherwise solicits individual ASAP branches through operational incentives, gratuities, or any other personal incentives.

16. When a manufacturer or service provider solicits business via direct influence or marketing to judicial, court, or DMV personnel.

B. If such cancellation, suspension, or revocation occurs, the manufacturer or service provider may request (within 15 days of notification) a hearing with the commission to contest the decision. Should the cancellation, suspension, or revocation be upheld, the manufacturer or service provider shall remain responsible for removal of all devices from customers' motor vehicles, and will bear the costs associated with the required removal and installation of a new approved device.

24VAC35-60-70. Ignition interlock device specifications.

A. All ignition interlock devices used pursuant to §§ 18.2-270.1 and 46.2-391.01 of the Code of Virginia must be approved by the commission. The commission shall maintain a list of approved ignition interlock devices.

B. Each service provider seeking to contract with the commission shall submit:

1. The name and address of the ignition interlock device manufacturer.

2. The name and model number of the ignition interlock device.

3. A detailed description of the device including drawings, schematics, wiring protocols, and instructions for its installation and operation.

C. The manufacturer or service provider shall provide to the commission, for distribution to the local ASAPs, literature promoting its device.

D. The manufacturer or service provider shall provide certification from an independent laboratory that its ignition interlock device has been tested in accordance with the [~~latest~~] model specifications published in the Federal Register by the National Highway Traffic Safety Administration [(57 FR 11772-11787 (April 7, 1992))], and that the ignition interlock device meets or exceeds those specifications. Included with the certification report should be the name and location of the testing laboratory, the address and phone number of the testing laboratory, a description of the tests performed, copies of the data and results of the testing procedures, and the names and qualifications of the individuals performing the tests.

E. If a device is submitted for approval by a service provider other than the manufacturer, the submitting party shall submit a notarized affidavit from the manufacturer of the device certifying that the submitting party is an authorized manufacturer's representative.

F. All ignition interlock devices will be required to meet the model specifications for Breath Alcohol Ignition Interlock Devices (BAIID) as set forth in the most recent model specifications published in the Federal Register by the National Highway Traffic Safety Administration (NHTSA). At a minimum, the following specifications will be met:

1. The ignition interlock device shall work accurately and reliably in an unsupervised environment, at minimal inconvenience to others, and without impeding the safe operation of the motor vehicle.

2. The ignition interlock device shall be able to analyze a specimen of alveolar breath for alcohol concentration, correlate accurately with established measures of blood alcohol concentration, and be calibrated according to the manufacturer's specifications.

3. The ignition interlock device shall be alcohol specific, using an electrochemical fuel cell that reacts to and measures ethanol, minimizing positive results from any other substance.

4. The ignition interlock device shall indicate when a sufficient sample of breath has been collected and shall indicate this by audible or visual means.

5. The ignition interlock device shall detect and record a BAC that is at or above the fail point for each ignition, attempted ignition, and rolling retest.

6. The results of the test shall be noted through the use of green, yellow, and red signals or similar pass/fail indicators. No digital blood alcohol concentration shall be indicated to the offender.

7. The ignition interlock device shall lock out an offender when a BAC at or above the fail point is detected.

8. The ignition interlock device shall have the ability to prevent the normal operation of the motor vehicle by an offender who fails to retest.

9. The ignition interlock device shall have the ability to perform a permanent lockout if the offender fails to appear for a scheduled monitoring appointment after the applicable five-day grace period.

10. The ignition interlock device shall automatically purge alcohol before allowing subsequent analyses.

11. The ignition interlock device shall issue a warning of an impending lockout.

12. The ignition interlock device shall be capable of random retesting and timed retesting.

13. The ignition interlock device shall warn the offender of upcoming service appointments for [at least] three days prior to the appointment. Should the offender fail to appear, the device shall lock out on the fifth day after the scheduled appointment, and the motor vehicle shall not be operable until the service provider has reset the device.

14. The internal memory of the ignition interlock device shall be capable of recording and storing a minimum of 500 interlock events and shall enter a service reminder if the memory reaches 90% of capacity.

15. The ignition interlock device shall be designed and installed in such manner as to minimize opportunities to be tampered with, altered, bypassed, or circumvented. The ignition interlock device shall not spontaneously bypass the ignition system nor shall it be able to be made operational by any mechanical means of providing air to simulate alveolar breath. Any bogus breath anti-circumvention features used to pass laboratory testing of the ignition interlock device shall be turned on.

16. The ignition interlock device shall be capable of recording and providing evidence of any actual or attempted tampering, alteration, bypass, or circumvention.

17. The ignition interlock device must operate at temperatures between -20 and 70 degrees Celsius.

18. The ignition interlock device shall operate up to altitudes of 2.5 km above sea level.

19. The readings of the ignition interlock device shall not be affected by humidity, dust, electromagnetic interference, smoke, exhaust fumes, food substance, or normal automobile vibration.

20. The operation of the ignition interlock device shall not be affected by normal fluctuations of power source voltage.

G. All ignition interlock devices that have been approved by the commission shall have affixed a warning label with the following language: "Any person tampering with or attempting to circumvent this ignition interlock system shall be guilty of a Class 1 misdemeanor and, upon conviction, be subject to a fine or incarceration or both." The cost and supply of the warning labels to be affixed to the ignition interlock devices shall be borne by the manufacturer or service provider. The manufacturer or service provider shall submit to the commission a prototype of the warning label for approval.

H. For initial startup of the motor vehicle:

1. The ignition interlock device shall enable the ignition relay after the successful completion of a breath alcohol test.

2. The device shall allow two minutes to elapse between the time the ignition is enabled and the start of the motor vehicle.

3. The ignition interlock device shall allow the motor vehicle to be restarted within two minutes of the engine being stopped without requiring an additional test.

4. If the initial test results in a lockout due to the offender's BAC level, the ignition interlock device shall not allow an additional attempt for five minutes.

5. If the offender's BAC is at or above the fail point on the second retest, the machine shall lock out for an additional 15 minutes and shall do so thereafter for each failed retest. A violation reset message shall instruct the offender to return the ignition interlock device to the service provider for servicing within five days.

6. If the ignition interlock device is not reset within five days, a permanent lockout will occur.

I. A rolling retest feature is required for all ignition interlock devices.

1. An ignition interlock device shall require a rolling retest within the first 10 to 20 minutes after the start of the motor vehicle and randomly thereafter at least once every 20 to 40 minutes as long as the motor vehicle is in operation.

2. The ignition interlock device shall produce a visual and audible signal of the need to produce a breath sample for the rolling retest. The offender shall have six minutes in which to provide the required rolling retest breath sample.

3. A free restart shall not apply if the ignition interlock device was awaiting a rolling retest that was not delivered.

4. Any deep lung breath sample at or above the fail point or any failure to provide a rolling retest deep lung breath sample within the required time, shall activate the motor vehicle's horn and cause the motor vehicle's headlights, parking lights, or emergency lights to flash until the engine is shut off by the offender.

5. Once the vehicle has been turned off, all prestart requirements shall become applicable.

6. The violations reset message shall instruct the offender to return the ignition interlock device to the service provider for servicing within five days.

7. If the ignition interlock device is not reset within five days, a permanent lockout will occur.

J. Additional technical specifications for the operation and installation of the ignition interlock device may be described in the contract between the commission and the service provider.

24VAC35-60-80. Ignition interlock device installation.

A. No offender who has a case pending in the court system shall have an interlock installed in Virginia unless enrolled in, and monitored by, the ASAP program in the area where the case originated. This enables VASAP to maintain consistency in policy and use of ignition interlock devices in the Commonwealth, and allows for a consistent pattern of instruction to the service provider.

B. The ignition interlock device must be installed by a manufacturer or authorized service provider within 30 days of the date of the court order; if not, the service provider will notify the ASAP.

C. All agreements between the service provider and the offender shall be in the form of a contract and be signed by the service provider and the offender. Copies of the written contract shall be retained by the service provider with a copy given to the offender and the local ASAP office.

D. Prior to installation of the ignition interlock device, offenders must provide to the service provider:

1. Photo identification.

2. The name and policy number of their automobile insurance.

3. The vehicle identification number (VIN) of all motor vehicles owned or routinely driven by the offender, and a statement disclosing the names of all other operators of the motor vehicles owned or driven by the offender.

4. A notarized affidavit from the registered owner of the vehicle granting permission to install the device if the car is not registered to the offender.

5. Written authorization from the commission if the air volume requirement, blow pressure, or anti-circumvention features of the ignition interlock device are to be lowered or disabled in order to compensate for an offender's diminished lung capacity.

E. Under no circumstances shall an offender be permitted to observe the installation of the device.

F. The service provider must inspect all motor vehicles prior to installation of the device to ensure that they are in acceptable mechanical and electrical condition. Under no circumstances shall staff of the authorized service provider install any device until, and unless, the motor vehicle is approved following the inspection.

G. Each installation shall include all of the tamper-resistant features required by the service provider such as unique seals, epoxies, or resins at all openings and exposed electrical connections.

H. An oral, written, or video orientation to the ignition interlock device will be developed and delivered by the service provider to the offender and other persons who may drive the motor vehicle, including information on the use and maintenance of the device as well as all service center locations, and procedures for regular and emergency servicing. A demonstration interlock will be available at each installation site for use in the training of customers.

I. If, during the installation, the offender fails to pass the initial breath test, the installation will be halted and the ASAP notified.

J. The manufacturer and/or service provider must maintain a toll-free 24-hour emergency phone service that may be used to request assistance in the event of failure of the ignition interlock device or motor vehicle problems related to operation of the ignition interlock device. The assistance provided by the authorized service provider shall include technical information and aid in obtaining towing or roadside service. The expense of towing and roadside service shall be borne by the offender unless it is determined by the service center technician that the ignition interlock device failed through no fault of the offender, in which case the manufacturer or service provider will be responsible for applicable expenses. The ignition interlock device shall be made functional within 48 hours of the call for assistance or the ignition interlock device shall be replaced.

K. At the time of device installation, a service provider may charge an installation fee. The maximum permissible cost for installation shall be set by the Commission on VASAP through contract, and service providers will not be permitted to exceed the maximum fee established by the commission. A portion of these fees shall include costs for offender indigency funds. In addition to the maximum fee permitted, service providers may collect applicable taxes and charge for optional insurance to cover device theft or damage. No installation fees shall be collected from the user until such services have been provided.

L. The manufacturer or service provider must provide indigent service to those offenders who are eligible for a reduction in fees based upon a declaration of indigence by the court and approval by the commission.

M. No later than the first service appointment, the offender must provide to the service provider a statement from every licensed driver who will be driving the offender's motor vehicle acknowledging their understanding of the requirements of the use of the ignition interlock device.

24VAC35-60-90. Calibration and monitoring visit.

A. The offender must present photo identification to the service provider for all required services.

B. The service provider must:

1. Provide service/monitoring of the ignition interlock device every 30 days; the offender will be given a five-day grace period to have the device inspected.

2. Calibrate the ignition interlock device at each service appointment using a dry gas reference sample.

3. Retrieve data from the ignition interlock device data log for the previous period and electronically submit it to the local ASAP within 24 hours of calibration.

4. Record the odometer reading of the motor vehicle in which the ignition interlock device is installed.

5. Check the ignition interlock device and wiring for signs of circumvention or tampering, and electronically report to the local ASAP any violation within 24 hours of servicing.

6. Collect the monthly monitoring fee from the offender.

C. All malfunctions of the ignition interlock device will be repaired or the ignition interlock device replaced by the service provider within 48 hours at no additional expense to the offender. If it is shown that the malfunction is due to mistreatment by the offender, and the offender has not purchased optional insurance, then the offender will be responsible for applicable repair fees.

D. A certified technician shall be available at the service center during specified hours to answer questions and to deal with any mechanical concerns that may arise with a motor vehicle as a result of the ignition interlock device.

E. The ignition interlock device shall record, at a minimum, the following data:

1. The time and date of each failed breath test;

2. The time and date of each passed breath test;

3. The breath alcohol level of each test; and

4. The time and date of any attempt to tamper or circumvent the ignition interlock device.

F. At the time of device calibration, a service provider may charge a monthly monitoring fee. The maximum permissible cost for monitoring and calibration shall be set by the Commission on VASAP through contract, and service providers shall not be permitted to exceed the maximum fee established by the commission. A portion of these fees shall include costs for VASAP administrative support and offender indigency funds. In addition to the maximum fee permitted, service providers may collect applicable taxes and charge for optional insurance to cover device theft or damage. Fees for the first monthly monitoring and calibration visit will be collected from the user in advance at the time of installation and monthly thereafter as such services are rendered.

24VAC35-60-100. Ignition interlock device removal.

A. Prior to removal of the ignition interlock device, the service provider must receive written authorization from the ASAP.

B. Offenders may not have their ignition interlock device removed or replaced by another manufacturer without written authorization from the ASAP.

C. If, at the time of removal, the service provider notices any failed tests that have not been backed up by a successful test within 10-15 minutes of the original test, the ASAP will be notified for approval before the removal is made.

D. Once the interlock has been removed, the service provider will send an authorized removal report to the ASAP via fax, email, or online database, documenting that the ignition interlock device has been removed and that all fees have been paid. Once verification of an authorized removal has been received by the ASAP, DMV will be notified that the offender has successfully completed the interlock requirements.

E. Whenever an ignition interlock device is removed, all components of the motor vehicle altered by the installation or servicing of the ignition interlock device must be restored to their original, preinstallation condition and removed in such a manner as not to impair the safe operation of the vehicle. All severed wires must be permanently reconnected (soldered) and insulated with heat shrink tubing or its equivalent.

F. No fee shall be charged to the offender for removal of the ignition interlock device.

24VAC35-60-110. Records and reporting.

A. The service provider shall be subject to announced or unannounced site reviews for the purpose of inspecting the facilities and offender records. Access to all service provider locations, records, and financial information shall be provided to any member of the commission staff for the purpose of verifying compliance with state law, commission regulations, and the service provider agreement.

B. In accordance with federal confidentiality guidelines, all personal and medical information provided to the service provider regarding offenders shall be kept confidential, maintained in individual offender files and secured within a lockable filing cabinet at the offender's service center. This filing cabinet shall remain locked during any period that the service center is unattended by a service provider employee.

C. Within 24 hours of installing an interlock, the service provider will provide the ASAP with an installation report that includes:

1. The name, address, and telephone number of the offender;

2. The owner, make, model, year, vehicle identification number, license plate number, and registration information of the motor vehicle; and

3. The serial number of the ignition interlock device installed.

D. Within 24 hours after performing a monitoring/calibration check, the service provider shall submit to the local ASAP all data generated to include:

1. Name of the offender whose device was monitored.

2. Name, address, and telephone number of the monitoring official.

3. Date of monitoring/calibration.

4. Motor vehicle make, model, year, identification number, and odometer.

5. Number of miles driven during the monitoring period.

6. Make, model, and serial number of the ignition interlock device.

7. Any change out of the device (handset and/or control box) and reason for the change out.

8. Any data indicating that the offender has attempted to start or drive the motor vehicle with a positive BAC at or above the fail point.

9. Any attempts to alter, tamper, circumvent, bypass, or otherwise remove the device.

10. Any noncompliance with conditions of the ASAP or interlock program.

11. Any offender concerns.

12. All charges incurred for the monitoring visit.

13. Date of next scheduled monitoring visit.

E. In addition, the service provider must have available monthly reports detailing:

1. All installations during the period covered.

2. All calibrations performed during the period, by date and offender name, detailing any unit replacements made during the monitoring period.

3. All datalogger information from each ignition interlock device.

4. Any evidence of misuse, abuse, or attempts to tamper with the ignition interlock device.

5. Any device failure due to material defect or improper installation.

6. A summary of all complaints received and corrective action taken.

F. The service provider shall be responsible for purchasing and providing necessary computer hardware and software to convey all data and information requested by the commission if such equipment is not already present at the commission office or local ASAP.

G. Reports shall be submitted to the local ASAP in the format specified by the Commission on VASAP.

VA.R. Doc. No. R09-1589; Filed October 16, 2009, 11:31 a.m.

EXECUTIVE ORDER NUMBER 95 (2009)

ESTABLISHING THE HEALTH INFORMATION TECHNOLOGY ADVISORY COMMISSION

Importance of the Issue

Building and improving our health information technology infrastructure is critical to providing quality health care. As the complexity of our health care system continues to grow, health care providers must leverage information technology to improve patient safety and health outcomes. It is critical that Virginia health care providers employ health information technology to provide the best care for patients. Improving health care technology infrastructure offers the potential for both improving the quality and safety of patient care and helping control costs.

To that end the American Recovery and Reinvestment Act of 2009 established state grants to promote health information technology and specifically Health Information Exchange. The U.S. Department of Health and Human Services through the Office of the National Coordinator for Health IT has created two collaborative programs: State Health Information Exchange Cooperative Agreement Program and Health Information Technology Extension Program.

The purpose of the Health Information Exchange (HIE) program is to continuously improve and expand health information exchange services over time and reach all health care providers in an effort to improve the quality and efficiency of health care. The program will build off of existing efforts to advance regional and state level HIE while moving towards nationwide interoperability. The purpose of the Regional Centers is to furnish assistance, defined as education, outreach, and technical assistance to help providers in their geographic service areas select, successfully implement, and meaningfully use certified EHR technology to improve the quality and value of health care.

Establishing the Office of Health IT

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Section 2.2.-104 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby direct the Virginia Department of Health to serve as the Commonwealth's Health Information Technology Lead through an Office of Health IT. The Office will consist of a director appointed by the Secretary of Health and Human Resources in consultation with the Commissioner of Health and additional professionals as the Secretary shall determine.

The director shall have the following responsibilities:

1. Serve as the Commonwealth's Health IT Lead to fulfill the responsibilities outlines in the American Recovery and Reinvestment Act of 2009 (ARRA).

2. Support the work of the Governor's Health Information Technology Advisory Commission.

3. Facilitate collaboration between the Commission and all appropriate stakeholders.

4. Ensure broadband and telemedicine initiatives are integrated into the Commission's planning and implementation process

5. Ensure VDH Health IT projects including the Advanced Directive Registry, the Immunization Registry, as well as any future Electronic Medical Record initiatives are appropriately aligned with the Commission's planning and aligned with ARRA-funded projects.

Establishing the Commission

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Section 2.2.-134 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish the Governor's Health Information Technology Advisory Commission.

The Commission shall have the following responsibilities:

6. Encourage public-private partnerships to increase adoption of electronic medical records for physicians in the Commonwealth.

7. Provide healthcare stakeholder input to build trust in and support for a statewide approach to HIE.

8. Ensure that an effective model for HIE governance and accountability is in place.

9. Examine and define an integrated approach with the Department of Medical Assistance Services and the Virginia Department of Health to enable information exchange and support monitoring of provider participation in HIE as required to qualify for Medicaid meaningful use incentives.

10. Develop and/or update privacy and security requirements for HIE within and across state borders.

11. Encourage and integrate the proliferation of telemedicine activities to support the Virginia healthcare improvement goals.

12. Monitor and support the activities of any Regional Extension Centers awarded in the Commonwealth.

13. Examine other health related issues as appropriate.

The Secretary of Health and Human Resources will chair the Commission and will be responsible for convening the Commission. The Commission shall consist of members appointed by the chair in consultation with the Secretary of Technology and representing broad stakeholder engagement in health information technology and exchange.

The Commission shall meet at the call of the chair to oversee the responsibilities as outlined above. Members of the Commission shall serve without compensation.

Staff support shall be provided through the Secretary of Health and Human Resources. Staff support from other agencies will be made available as the Secretary shall designate.

This Executive Order shall be effective upon its signing and shall remain in full force and effect, unless sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 9th day of October 2009.

/s/ Timothy M. Kaine
Governor

EXECUTIVE ORDER NUMBER 96 (2009)

CREATING THE VIRGINIA CAREER PATHWAYS SYSTEM WORKING GROUP

Importance of the Initiative

Growing pressure from international competition and the rapid pace of technological change have led to an increasing demand for highly skilled workers to satisfy labor market needs. As the economic recession has taken hold, Virginia must strengthen the link between and among levels of education and training and workforce needs at the state level and at a regional level in order to remain competitive. By bolstering the public education and training systems and by strengthening the links between levels of education and training, state and regional policymakers can provide the lifeblood for thriving economies in Virginia.

Virginia as a whole is well positioned to succeed in the increasingly talent-driven global economy, but not all regions and people within the Commonwealth are prepared to share in the success. On average, Virginia has a highly educated workforce and a growing segment of industries highly reliant on the skills and talents of their workforces. However, the distribution of the educated populace and thriving economic sectors is geographically uneven.

On state and regional levels, many of the pieces are in place for Virginia to train workers and to meet labor market needs across Virginia, including building many comprehensive one-stop centers across the Commonwealth. However, in order to do so more effectively and efficiently, it is critical that all agencies that play a role in education, training, and economic development communicate with each other regularly and coordinate where appropriate. Virginia has an opportunity to streamline efforts by strengthening and formalizing this communication and coordination among agencies.

One important way to enable communication and coordination is through the development of a career pathways system and implementation of the recommendations laid out in the Career Pathways Strategic Plan (December 2008). A career pathways system is a series of connected education and training programs and support services that enable individuals to secure employment within a specific industry or occupational sector and to advance over time to successively higher levels of education or employment in that sector. Each step on a career pathway is designed explicitly to prepare for the next level of employment and education.

The career pathways system will provide the framework and program support for developing a high-skill workforce to support growing industries on the state, regional, and local levels. The system will necessarily draw from all aspects of workforce development - education, workforce training, and business and industry. All relevant state agencies and Cabinet secretaries will be actively engaged in the effort.

Virginia Career Pathways System Working Group

Virginia's approach to career pathways needs to be systemic, responsive to business and labor market needs, and characterized by five basic elements: state leadership, reliable and consistent use of data, flexibility, sustainability, and visibility. The system must be guided by state policy and coordinated at state agency levels so there is a clear understanding of direction, roles and responsibilities, processes and allowable use of funding as well as regular and ongoing communication between and among agencies.

The Virginia Career Pathways Working Group will ensure commitment and participation by agencies central to education, training and workforce needs as well as coordination with other entities. The Working Group will coordinate with the Virginia Workforce Council to provide leadership and advocacy at the state level as appropriate.

Composition of the Working Group:

Working Group members shall be appointed by their respective agency head or Cabinet Secretary. Recognizing the need for active participation by education and training agencies as well as business, industry, and employment agencies, Working Group membership shall include representatives from:

- Governor's Office
- Office of the Secretary of Education
- Office of the Secretary of Commerce and Trade
- The Chief Workforce Development Officer

- State Council of Higher Education for Virginia
- Virginia Community College System
- Virginia Department of Education
- Virginia Department of Labor and Industry
- Virginia Economic Development Partnership
- Department of Social Services
- Virginia Employment Commission
- Other agencies as decided upon by the Working Group and Career Pathways Lead

Additionally, an Advisory Group comprised of representatives from other agencies impacted by the Career Pathways System will provide guidance and participate as necessary. The Advisory Group will assist the Career Pathways Working Group as needed with issues that relate to Advisory Group members' agencies. Advisory Group members will not be required to regularly participate in meetings, but may be called upon as needed. Advisory Group membership could include representatives from the following agencies:

- Department of Juvenile Justice
- Department of the Aging
- Department of Correctional Education
- Department of Business Assistance
- Department of Rehabilitative Services

Duties of the Working Group

The Working Group will deliver on the five major recommendations of Virginia's career pathways strategic plan by establishing the means to:

- Encourage and facilitate the use of data to strengthen connections to business, inform program development, and measure success;
- Encourage transitions among education and employment systems, programs, and services while allowing for flexibility at regional and institutional levels;
- Expand the provision of supportive services - including advising and coaching - to increase retention and completion rates among Virginians enrolled in workforce training and education programs;
- Establish sustainability of Virginia's career pathways system as an interagency and business priority across all relevant agencies and key industries; and
- Establish state and regional leadership and an operational framework to support regional action.

The Working Group is also responsible for:

- Working with the Career Pathways Lead to create policy, guidelines, and performance and progress measurement systems for implementation of the state career pathways system.
- Coordinating across state agencies to create and support the implementation of the statewide career pathways system.
- Advising the Virginia Workforce Council on career pathways related issues that may require state policy, communications, and advocacy.
- Advising the Career Pathways Lead on implementation of the career pathways system.
- Undertaking communications efforts within their agencies to support the adoption of, technical assistance for and implementation of career pathways activities.

Working Group Leadership

The Secretary of Education will Chair the Working Group. The Chair will be responsible for:

- Convening quarterly meetings of the Working Group.
- Providing strategic guidance for the Career Pathways Lead and the Working Group.
- Ensuring that the Governor and his Cabinet are apprised of activities of the Working Group.
- Promoting the policy goals of the Working Group with the Governor and his staff as well as members of the General Assembly.
- Liaising with other entities and stakeholders whose mission or interests align with the goals of the statewide career pathways system, including the Governor's Working Group on Early Childhood Initiatives, the P-16 Council, the Council on Virginia's Future, and the Virginia Workforce Council.

The Working Group will be assisted by the Career Pathways Lead (the Lead). The Lead shall be supported by all agencies represented on the Career Pathways Working Group through financial, in-kind, or other types of assistance for the role. The Lead's responsibilities will include:

- Ensuring all state level career pathways system efforts are implemented according to the direction and guidance provided by the Working Group.
- Working with the Working Group to ensure that the recommendations of the Career Pathways Strategic Plan are implemented in an appropriate and timely manner.

- Reporting progress, issues requiring action, and recommending action to the Working Group on a regular basis.
- Pursuing appropriate infrastructure and funding to support long-term sustainability of the statewide career pathways system.
- Convening a monthly conference call with agency staff supporting the work of the Working Group.

This Executive Order shall be effective upon its signing and shall remain in full force and effect until December 31, 2011, unless sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 13th day of October 2009.

/s/ Timothy M. Kaine
Governor

EXECUTIVE ORDER NUMBER 97 (2009)

CONTINUING THE VIRGINIA PRISONER REENTRY POLICY ACADEMY

Importance of Issue

Section 2.2-221.1 of the Code of Virginia directs the Secretary of Public Safety to establish an integrated system for coordinating the planning and provision of offender transitional and reentry services among and between state, local, and nonprofit agencies in order to prepare inmates for successful transition into their communities upon release from incarceration and for improving opportunities for treatment, employment, and housing while on subsequent probation, parole, or post-release supervision.

It is essential that Virginia continue with its efforts of fostering a successful transition of offenders into their communities, and reducing the rates at which they are returned to prison. In order to improve outcomes, we must ensure that those who are released have been prepared to find and maintain employment, receive treatment for mental health and substance abuse issues, and are able to live with their families or in other stable home environments. We can and must reduce recidivism and improve the safety and quality of life in those communities to which offenders return. Accordingly, I am taking the following measures.

Continuing the Virginia Prisoner Reentry Policy Academy

By virtue of the authority vested in me as Governor under Article V, Section 1 of the Constitution of Virginia, and Sections 2.2-103 and 2.2-104 of the Code of Virginia, I hereby direct the Office of the Secretary of Public Safety to maintain the Virginia Prisoner Reentry Policy Academy, originally establish pursuant to Executive order 22 (2006), which expired December 31, 2008.

The Secretary of Public Safety, working with such other Cabinet Secretaries as he deems necessary, shall develop a long term strategic plan for achieving the goal of reducing offender recidivism for those released from incarceration. The plan shall contain measurable objectives, and shall comprehensively address strategies to be employed both while offenders are incarcerated and following their release back into their communities. Such a plan shall be submitted to me for my approval no later than December 31, 2009, and shall be updated by December 31 of each succeeding year.

The Reentry Policy Academy shall work in close collaboration with other Cabinet Secretaries, executive branch agencies and boards along with local governments, their agencies, and non-profit and faith-based organizations in the development and implementation of this plan, and shall prepare reports which identify initiatives and assess measurable outcomes as may be requested by me or by the General Assembly.

Effective Date of the Executive Order

This Executive Order will remain in effect until December 31, 2010.

Given under my hand and under the Seal of the Commonwealth of Virginia this 22nd day of October 2009.

/s/ Timothy M. Kaine
Governor

EXECUTIVE ORDER NUMBER 98 (2009)

CONTINUING THE COMMONWEALTH CONSORTIUM FOR MENTAL HEALTH/ CRIMINAL JUSTICE TRANSFORMATION

National surveys have shown that 16% of all jail inmates have some form of mental illness. The 2005 Virginia Jail Survey yielded a similar prevalence in the Commonwealth of jail inmates with mental illness. These findings suggest that persons with mental illness are far too often subject to arrest and incarceration in Virginia for minor "nuisance" offenses related to their symptoms, and that many jail inmates with mental illness do not receive adequate mental health treatment in our jails, or when they return to the community. This lack of treatment access can lead to continuing acute illness or relapse, as well as engagement in criminal activity, including violent acts.

During the past decade, Virginia lawmakers and Executive Branch agencies have spearheaded efforts at identifying the needs of persons with mental illness who become involved with the criminal justice system. It is imperative that Virginia address the pressing public safety and treatment access challenges posed by the lack of adequate mental health

treatment for persons with mental illness in the criminal justice system. Doing so will require that there be a coordinated effort across all branches of state government, as well as the active and direct development of community-based solutions to this serious social problem.

By virtue of the authority invested in me by Article V of the Constitution of Virginia and Section 2.2-134 of the Code of Virginia, I hereby direct the Office of the Secretary of Health and Human Resources and the Office of the Secretary of Public Safety to lead the Commonwealth Consortium for Mental Health/Criminal Justice Transformation, with the dual purpose of preventing unnecessary involvement of persons with mental illness in the Virginia criminal justice system, and promoting public safety by improving access to needed mental health treatment for persons with mental illness for whom arrest and incarceration cannot be prevented.

The Commonwealth Consortium shall be chaired by the Secretary of Health and Human Resources and the Secretary of Public Safety, or their designees. The Office of the Attorney General and the Secretary of Finance shall provide key leadership and guidance to the Consortium. The Virginia General Assembly and the Supreme Court of Virginia have been invited to participate as partners in the Consortium. Membership of the Consortium shall include Commissioners or Directors of the following state government agencies (or their designees) that have a current or potential central role in improving access to treatment for persons with mental disorders in the criminal justice system:

- Board for People with Disabilities
- Commonwealth Attorney's Services Council
- Department of Corrections
- Department of Correctional Education
- Department of Education
- Department of Health
- Department of Housing & Community
- Department of Juvenile Justice
- Department of Medical Assistance Services
- Department of Planning & Budget
- Department of Health Professions
- Department of Rehabilitation Services
- Department of Social Services
- Department of Veterans Services
- Governor's Office for Substance Abuse Prevention
- Office of the Comprehensive Services Act (CSA)
- Virginia Criminal Sentencing Commission
- Virginia Employment Commission
- Virginia Indigent Defense Commission
- Virginia Office of Protection and Advocacy (VOPA)
- Virginia State Crime Commission
- Virginia State Police

The following additional organizations shall be invited to serve as members of the Commonwealth Consortium:

- Mental Health America of Virginia (MHAV)
- NAMI Virginia and its state regional affiliates
- University of Virginia, Institute of Law, Psychiatry and Public Policy
- Virginia Association of Chiefs of Police
- Virginia Association of Community Services Boards (VACSB)
- Virginia Association of Counties
- Virginia Association of Regional Jails
- Virginia Bar Association
- Virginia Community Criminal Justice Association (VCCJA)
- Virginia Council on Juvenile Detention
- Virginia Municipal League
- Virginia Sheriffs' Association
- Virginia Hospital and Healthcare Association
- VOCAL Virginia

The Consortium shall have the following goals:

Goal I: Transformation planning:

> The Consortium shall evaluate the viability of jail diversion models for persons with mental illness, and develop recommendations for improving access to mental health treatment for persons with mental illness who cannot be diverted from arrest and incarceration. Representatives from relevant stakeholder groups in each locality, including Community Criminal Justice Boards, Law Enforcement, Local and Regional Jails, Community Services Boards and Local Community Corrections, Mental Health Services Consumers, and other public and private organizations shall be invited to participate in comprehensive transformation planning for their regions.

Goal II: Establish a Criminal Justice/Mental Health Training Academy for the Commonwealth:

The Academy will provide an integrative locus for coordinating the training activities of currently disparate state and local, public and private organizations into a concerted program of cross-training for criminal justice and mental health personnel.

This Executive Order shall be effective upon its signing and shall remain in full force and effect until July 1, 2010, unless sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 22nd day of October 2009.

/s/ Timothy M. Kaine
Governor

EXECUTIVE ORDER NUMBER 99 (2009)

THE VIRGINIA COMPLETE COUNT COMMITTEE

Importance of the Issue

The United States Constitution mandates a decennial count of all people living in the United States and its territories. This monumental task is one that affects the distribution of approximately $400 billion dollars from the federal government to state and local governments as well as recognized tribal groups. It also affects the redistricting of legislative districts and reapportionment of seats that each state has at the U.S. House of Representatives. The 2010 Census is quickly approaching and all stakeholders should collectively support the efforts of the U.S. Census Bureau. The Governor's Complete Count Committee will maximize such efforts.

Historically, the U.S. Census Bureau has experienced low survey response rates from many communities across the Commonwealth. The Governor's Complete Count Committee was created to improve the participation and representation of all Virginians. It will consist of key community members and will represent the many geographic regions and diverse communities in the Commonwealth. The Committee will operate as a central conduit of information and facilitate the sharing of ideas and community resources regarding the 2010 Census. These efforts will improve collaboration between the Commonwealth and the U.S. Census Bureau and encourage all stakeholders to actively prepare for the 2010 Census

Establishing the Committee

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Section 2.2.-134 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish the Virginia Complete Count Committee.

The Committee is comprised of 29 members appointed by the Governor- many of whom are chairs of local complete count committees, representatives from organizations like the League of Women Voters, the Baptist General Convention, Veterans of Foreign Wars, Virginia Supportive Housing, the NAACP, the Urban League and leaders from various minority communities and such other members as may be appointed by the Governor. All Committee members shall serve without compensation.

The Committee shall have the following responsibilities:

1) Help ensure an accurate 2010 Census count in the Commonwealth of Virginia

2) Use their knowledge of the communities in the Commonwealth to share this message with as many individuals as possible

3) Share ideas and information that will benefit local Complete Count Committees and Community Partners

4) Encourage residents to complete and mail back their census questionnaires

5) Identify organizations in the community that can provide space for Questionnaire Assistance Centers

6) Encourage organizations to include 2010 Census on the agenda of their meetings, workshops or conferences

This Executive Order shall be effective upon its signing and shall remain in full force and effect until December 31, 2010, unless sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 22nd day of October 2009.

/s/ Timothy M. Kaine
Governor

EXECUTIVE ORDER NUMBER 100 (2009)

ESTABLISHING THE VIRGINIA INDIAN COMMEMORATIVE COMMISSION

Importance of the Issue

Native Americans have lived in the land now known as Virginia for thousands of years, their history having been and continuing to be documented. The historical record confirms that Virginia Indians provided aid and comfort to the British colonists in 1607 and were instrumental in the establishment of the first permanent English-speaking settlement in North America at Jamestown.

The legacy of the indigenous peoples of the Commonwealth has been recorded in the names of many Virginia locations and landmarks, such as the Cities of Chesapeake and Roanoke, the Counties of Accomack, Appomattox, and Powhatan, and the Chickahominy, Mattaponi, Pamunkey,

Potomac, Powhatan, and Rappahannock Rivers, as well as many other sites. Despite hardships brought about by the loss of lands, languages, and civil rights, American Indians in Virginia have persisted and continued to contribute to the Commonwealth through agriculture, land stewardship, teaching, military and civil service, the arts, and other avenues of productive citizenship.

Establishment of the Commission

In recognition that the courage, persistence, determination, and cultural values of Virginia's Indians have significantly enhanced and contributed to society, the General Assembly approved House Joint Resolution 680 (2009), requesting the creation of a commission to recommend an appropriate monument in Capitol Square to commemorate the life, achievements, and legacy of American Indians in the Commonwealth. Accordingly, by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to § 2.2-134 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, there is hereby established the Virginia Indian Commemorative Commission.

Composition of the Commission

The Virginia Indian Commemorative Commission shall consist of the Governor of Virginia, who shall serve as Chairman thereof, the Lieutenant Governor of Virginia, the Speaker of the House of Delegates, three members of the House of Delegates appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates, the Clerk of the House of Delegates, the Chairwoman of the Senate Committee on Rules, two citizen members of the Senate appointed by the Senate Committee on Rules, the Clerk of the Senate, the Executive Director of the Capitol Square Preservation Council, three members who shall be representatives of Virginia Indians to be appointed by the Governor, and the Executive Director of the Virginia Capitol Foundation who shall serve ex officio with nonvoting privileges. Additional members may be appointed at the Governor's discretion. The Virginia Council on Indians shall provide staff support for the Commission.

Members of the Commission shall serve without compensation, but they may receive reimbursement for expenses incurred in the discharge of their official duties.

Charge for the Commission

The Commission shall determine and recommend to the General Assembly an appropriate monument in Capitol Square to commemorate the life, achievements, and legacy of American Indians in the Commonwealth. The Commission shall seek private funding for the operation and support of the Commission and the erection of an appropriate monument. However, the costs of implementation of the Commission, its work, and the compensation and reimbursement of members shall be borne by the Commission from such private funds as it may acquire to cover the costs of its operation and work. The Commission may establish an organization with 501c(3) status for fundraising purposes. All agencies of the Commonwealth shall provide assistance to the Commission, upon request.

The Commission shall report annually the status of its work, including any findings and recommendations, to the General Assembly, beginning on December 1, 2009. The report shall also be posted on the General Assembly's website.

This Executive Order shall become effective upon its signing and shall remain in effect until the Commission submits a final report, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 22nd day of October 2009.

/s/ Timothy M. Kaine
Governor

STATE CORPORATION COMMISSION

Bureau of Insurance

October 13, 2009

Administrative Letter 2009-10

To: All Insurers Licensed and Recognized in Virginia

Re: Premium Tax and Assessment Practices and Procedures

Pursuant to §§ 58.1-2526 and 38.2-406 of the Code of Virginia, the State Corporation Commission Bureau of Insurance has developed and requires the Virginia Tax Packet Payment Voucher (Payment Voucher) to be filed as part of the annual tax and assessment forms due March 1 of each year. The purpose of the Payment Voucher is to provide companies the ability to pay all amounts due with one check. Payments not submitted with the Payment Voucher will not be processed. Payments received without the Payment Voucher will be sent back to the insurer with instructions to file the Payment Voucher. Penalties and interest will apply to any payments made after the due date. The Payment Voucher must be downloaded from our website address at http://www.scc.virginia.gov/division/boi/webpages/boiinstaxinsurancecoinfo.htm or requested from the Administrative Tax Unit at (804) 371-9096, if you do not have access to the website.

The State Corporation Commission Bureau of Insurance will no longer refund monies collected as a result of companies' failure to properly complete the Retaliatory Tax Report. Companies later determining that funds were paid in error will have to apply via a formal petition for the correction of taxes pursuant to § 58.1-2030 of the Code of Virginia. The application shall be by written petition, in duplicate and verified by affidavit.

Questions regarding this letter may be directed to: Brian P. Gaudiose, Deputy Insurance Commissioner, Administrative Division, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9078.

/s/ Alfred W. Gross
Commissioner of Insurance

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Consent Order for Wayne Freeze, Jr.

An enforcement action has been proposed for Wayne Freeze, Jr. for alleged violations in Page County. Mr. Freeze is a poultry waste broker and failed to submit his poultry waste transfer records by February 15 for the calendar years 2007 and 2008. A consent order with Mr. Freeze will collect a civil charge and require timely submittal of his poultry waste transfer records for 2009. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. David Robinett will accept comments by email at david.robinett@deq.virginia.gov, FAX (540) 574-7878 or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801, from November 9, 2009, to December 9, 2009.

Proposed Consent Order for Galberry Corporation

An enforcement action has been proposed for Galberry Corporation for alleged violations in Chesapeake, Virginia. A consent order describes a settlement to resolve unpermitted wetland impacts that occurred adjacent to and north of Willow Road and west of Lake Shore Drive in the Jolliff Woods subdivision. The order requires corrective action and payment of a civil charge. A description of the proposed order is available at the DEQ office named below or online at www.deq.virginia.gov. Daniel J. Van Orman will accept comments by email at daniel.vanorman@deq.virginia.gov, FAX (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from November 9, 2009, to December 9, 2009.

Proposed Consent Order for Vitex Packaging, Inc.

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for a location in Suffolk, Virginia.

Public comment period: November 9, 2009, to December 9, 2009.

Consent order description: The State Water Control Board proposes to issue a consent order to Vitex Packaging, Inc., to address alleged violations of Virginia State Water Control Law. The location where the alleged violations occurred is 1137 Progress Road, Suffolk. The consent order describes a settlement to resolve alleged violations of the facility Virginia Pollutant Discharge Elimination System General Permit VAR05.

How to comment: DEQ accepts comments from the public by email, fax, or postal mail. All comments must include the name, address, and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at www.deq.virginia.gov.

Contact for public comments, document requests, and additional information: Paul R. Smith, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2020, FAX (757) 518-2009, or email paul.smith@deq.virginia.gov.

Proposed Action for Zotas Petroleums, LLC

An enforcement action has been proposed for Zotas Petroleums, LLC for alleged violations at eight of its retail gasoline facilities in Chesterfield and Henrico counties. The action requires Zota to take corrective action and pay a civil charge. A copy of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Frank Lupini will accept comments by email at frank.lupini@deq.virginia.gov, FAX (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from November 9, 2009, to December 10, 2009.

Total Maximum Daily Load Studies in Chuckatuck Creek, Kings Creek and Ballard Marsh Creek, Isle of Wight and Suffolk Counties

The Virginia Department of Environmental Quality will host a public meeting on water quality studies for Chuckatuck Creek, Kings Creek, and Ballard Marsh Creek located in Isle of Wight and Suffolk counties on Monday, November 9, 2009.

The meeting will start at 6:30 p.m. in the Oakland Elementary School cafeteria located at 5505 Godwin Blvd., Suffolk, Virginia. The purpose of the meeting is to provide information and discuss the study with interested local community members and local government.

Chuckatuck Creek (VAT-G11E-16) was identified in Virginia's 1998 § 303(d) TMDL Priority List and Report as impaired for not supporting the shellfishing use. The impairment is based on the shellfish harvesting condemnation of Growing Area 62 (062-080) imposed by the Virginia Department of Health - Division of Shellfish Sanitation.

Kings and Ballard Marsh Creeks (VAT-G11E-17) were also identified in Virginia's 1998 § 303(d) TMDL Priority List and Report as impaired for not supporting the shellfishing use. The impairment is based on the shellfish harvesting condemnation of Growing Area 62 (062-164) imposed by the Virginia Department of Health - Division of Shellfish Sanitation.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report and subsequent water quality assessment reports.

During the study, DEQ will develop a total maximum daily load for each impaired water. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

The public comment period on materials presented at this meeting will extend from November 9, 2009, to December 8, 2009. For additional information or to submit comments, contact Jennifer Howell, Virginia Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, or email jennifer.howell@deq.virginia.gov.

Additional information is also available on the DEQ website at www.deq.virginia.gov/tmdl.

Total Maximum Daily Load for the Little Calfpasture River in Rockbridge County

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of a total maximum daily load (TMDL) for the Little Calfpasture River in Rockbridge County. The Little Calfpasture River was listed on the 1996 § 303(d) TMDL Priority List and Report as impaired due to violations of the state's general (benthic) standard for aquatic life. This impairment extends for 0.82 miles from the Lake Merriweather Dam to the confluence with the Maury River.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report.

The final public meeting on the development of this TMDL will be held on Thursday, November 19, 2009, 7 p.m. at the Rockbridge Baths Volunteer Fire Department, 5024 Maury River Rd., Rockbridge Baths, Virginia. The TMDL document will be available on the DEQ website on or before November 19, 2009, at www.deq.virginia.gov/TMDL.

The public comment period for the final public meeting and TMDL document will end on December 18, 2009, at 11:59 p.m. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Tara Sieber, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7870, FAX (540) 574-7878, or email tara.sieber@deq.virginia.gov.

Total Maximum Daily Load Study in Mattawoman Creek, Northampton County

The Virginia Department of Environmental Quality will host a public meeting on a water quality study for Mattawoman Creek, located in Northampton County, on Thursday, November 12, 2009.

The meeting will start at 7 p.m. in the Accomack-Northampton Planning District Commission office located at 23372 Front Street, Accomac, Virginia. The purpose of the meeting is to provide information and discuss the study with interested local community members and local government.

Mattawoman Creek (VAT-C14E-13) was identified in Virginia's 1998 § 303(d) TMDL Priority List and Report as impaired for not supporting the shellfishing use. The impairment is based on the shellfish harvesting condemnation of Growing Area 86 imposed by the Virginia Department of Health-Division of Shellfish Sanitation.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report and subsequent water quality assessment reports.

During the study, DEQ will develop a total maximum daily load for the impaired water. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

The public comment period on materials presented at this meeting will extend from November 12, 2009, to December 11, 2009. For additional information or to submit comments, contact Jennifer Howell, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, or email jennifer.howell@deq.virginia.gov.

Additional information is also available on the DEQ website at www.deq.virginia.gov/tmdl.

Total Maximum Daily Load Study in Pettit Branch, Accomack County

The Virginia Department of Environmental Quality will host a public meeting on a water quality study for Pettit Branch, located in Accomack County, on Thursday, November 12, 2009.

The meeting will start at 7 p.m. in the Accomack-Northampton Planning District Commission office located at 23372 Front Street, Accomac, Virginia. The purpose of the meeting is to provide information and discuss the study with interested local community members and local government.

Pettit Branch (VAT-D02R-01) was identified in Virginia's 1998 § 303(d) TMDL Priority List and Report as impaired for not supporting the aquatic life use. The impairment is based on biological monitoring data of the stream's benthic community. Virginia agencies are working to identify the stressors that are affecting the benthic communities in this creek.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report and subsequent water quality assessment reports.

During the study, DEQ will develop a total maximum daily load for the impaired water. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

The public comment period on materials presented at this meeting will extend from November 12, 2009, to December 11, 2009. For additional information or to submit comments, contact Jennifer Howell, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, or email jennifer.howell@deq.virginia.gov.

Additional information is also available on the DEQ website at www.deq.virginia.gov/tmdl.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on October 13, 2009 and October 15, 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 Seventy (09)

Virginia Lottery Retailer Cashing Bonus Program and Rules (effective 10/13/09)

Director's Order Number Seventy-Six (09)

Virginia's Instant Game Lottery 1042 "Lightning 7's" Final Rules for Game Operation (effective 10/8/09)

DEPARTMENT OF MINORITY BUSINESS ENTERPRISE

Notice of Public Comment for Certification Regulations

The Virginia Department of Minority Business Enterprise, pursuant to § 2.2-1403 of the Code of Virginia, is required to adopt regulations to implement certification programs for small, women- and minority-owned businesses. Such regulations are exempt from the Administrative Process Act (§ 2.2-400 et seq.), pursuant to subdivision B 2 of § 2.2-4002 of the Code of Virginia.

As a courtesy to the public, however, the Department of Minority Business Enterprise is accepting public comments on the adoption of new regulations found in 7VAC10-21 of the Virginia Administrative Code. The purpose of this action is to revise the administrative regulations that govern the certification of eligible out-of-state business enterprises based on its principal place of business and to conform the

definition of a Virginia-based business therewith. The draft regulations are available on the Commonwealth's Regulatory Town Hall at www.townhall.virginia.gov as well as on the agency's website at www.dmbe.virginia.gov.

Public comments may be submitted electronically or via first class mail until November 13, 2009, to Paula Gentius, Esq., Executive Policy Advisor, Department of Minority Business Enterprise, 1111 East Main Street, Suite 300, Richmond, VA 23219, or email paula.gentius@dmbe.virginia.gov.

Contact Information: Paula Gentius, Esq., Executive Policy Advisor, Department of Minority Business Enterprise, 1111 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-1616, FAX (804) 371-7359, or email paula.gentius@dmbe.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Action for City of Bedford

An enforcement action has been proposed for the City of Bedford, regarding the city's sewage collection and transmission system for alleged violations of the State Water Control Law. The proposed enforcement action requires corrective action. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Robert Steele will accept comments by email at robert.steele@deq.virginia.gov, FAX (540) 562-6725, or postal mail at Department of Environmental Quality, 3019 Peters Creek Road, Roanoke, VA 24019, from November 9, 2009, to December 9, 2009.

Proposed Action for Town of Farmville

An enforcement action has been proposed for the Town of Farmville for alleged violations at the town wastewater treatment plant. The proposed enforcement action contains a schedule of compliance that details the corrective action required. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. G. Marvin Booth, III will accept comments by email at marvin.booth@deq.virginia.gov, FAX (434) 582-5125, or postal mail at Department of Environmental Quality, 7705 Timberlake Road, Lynchburg, VA 24502, from November 9, 2009, to December 10, 2009.

Proposed Consent Order for HHHunt Corporation

An enforcement action has been proposed for HHHunt Corporation for alleged violations at the Rutland development in Hanover County. The proposed consent order amendment extends the schedule for required stream restoration and requires additional stream mitigation. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Allison Dunaway will accept comments by email at acdunaway@deq.virginia.gov, FAX (804) 527-5106 or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from November 4, 2009, to December 9, 2009.

Proposed Consent Order for W. Boutros & Company

An enforcement action has been proposed for W. Boutros & Company for alleged violations in Augusta County. A proposed consent order describes a settlement to resolve alleged wetland mitigation violations at its Ana Marie Estates development. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Steven W. Hetrick will accept comments by email steven.hetrick@deq.virginia.gov, FAX (540) 574-7878, or postal mail Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801, from November 9, 2009, to December 9, 2009.

Proposed Action for West Crossing, LLC

An enforcement action has been proposed for West Crossing, LLC 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. Robert Steele will accept comments by email at robert.steele@deq.virginia.gov, FAX (540) 562-6725, or postal mail at Department of Environmental Quality, 3019 Peters Creek Road, Roanoke, VA 24019, from November 10, 2009, to December 9, 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 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

BOARD OF PHARMACY

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

Publication: 26:2 VA.R. 271-273 September 28, 2009.

Correction to Final Regulation:

Page 273, 18VAC110-20-20 I, underscore text in subdivisions 1 through 9 to reflect added language.

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